TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 721

SAMUEL TAYLOR, PETITIONER,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MARCH 3, 1948.

CERTIORARI GRANTED APRIL 5, 1948.

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IN THE SUPREME COURT OF ALABAMA, FIRST DIVISION

[File endorsement omitted]

No. 279

Ex Parte Samuel Taylor

In Re Samuel Taylor, Appellant,

vs.

State of Alabama, Appellee

Petition for Writ of Error Coram Nobis—Filed September 18, 1947

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama.

Your Petitioner, Samuel Taylor, respectfully represents and shows unto this Honorable Court the following facts upon which he seeks affirmative relief:

1. That your Petitioner is a citizen of the United States of America and of the State of Alabama and is over the age of twenty-one years.

2. That your Petitioner was indicted, tried and convicted at the Circuit Court of Mobile County, Alabama on a charge of rape and sentenced to suffer the death penalty, from which judgment your petitioner prosecuted an appeal to the Supreme Court of Alabama where the said judgment was duly affirmed on the 24th day of April, 1947, the style of the cause being Samuel Taylor vs. The State of Alabama, First Division No. 279 and reported in Volume 30, Southern Reporter 2nd Series at page 256.

3. Your Petitioner further shows that said judgment, verdict and sentence were based on an alleged confession which was introduced in evidence on the trial of said cause by the State. That said confession was obtained by the use of force, fear and intimidation, threatened and inflicted.

on and against Petitioner. That said confession was not freely and voluntarily made by your Petitioner, and had [fol. 3] these facts been made known to the Court at that time said confession would have been inadmissible in evidence against your Petitioner under the laws and rules of the State of Alabama and this Honorable Court.

4. That your Petitioner was arrested by police officers of the City of Prichard, Alabama at 11:30 P. M. on June 29, 1946. That arrested at same time as your Petitioner were three other men, to-wit: Lawrence H. Franklin, Johnnie Kimbrough and Calvin Jones. That your Petitioner and the other three men named above were taken into the city jail at Prichard, Alabama. Before they were docketed or placed in a cell, police officers on duty at that time whose names are unknown to your Petitioner beat, kicked and bruised your Petitioner and said three men in an effort to obtain a confession of a robbery. That after Petitioner and the three other prisoners were docketed they were taken by said police officers one at a time in a small room in said jail. That all four of said men were brutally beaten, kicked and bruised in an effort to obtain said confession. That your Petitioner did, in fact, confess to said robbery but that after he had made this confession, he was retained in said room in the Prichard, Alabama jail by said police officers and told that he must make a confession of the rape for which he was later convicted and sentenced by the Circuit Court of Mobile County as aforesaid. That he was further beaten, kicked and bruised by said police officers but refused to make a confession of said rape. That he was thereafter returned to his cell in the said City Jail at Prichard, Alabama by said police officers at an early hour in the morning of Sunday, June 30, 1946. That he was not further molested throughout the day of said Sunday but that during the late hours of Sunday night, June 30, 1946, and early morning July 1, 1946, he was further beaten, bruised, threatened and intimidated by the police officers of the City of Prichard Alabama and was told he must confess to said rape. That your Petitioner still refused to make a confession of said crime although he was beaten, bruised and threatened as aforesaid. That said mistreatment and questioning by the police officers of the City of Prichard continued for a period of several hours and upon Petitioner's failure to confess to said crime he was again returned

to his cell where he was left unmolested throughout the day of Monday, July 1, 1946. That on the night of Monday, July 1, 1946 and the early morning of Tuesday July 2nd, 1946, Petitioner was again subjected to similar mistreatment and questioning as on the previous night. Again your [fol. 4] Petitioner maintained his innocence of said crime and after several hours was returned to his cell where he was left unmolested until the night of Tuesday, July 2 and early morning of Wednesday, July 3, 1946. On that night he was again visited by the police officers of the City of Prichard as aforesaid and was subjected to more brutal and cruel beatings and mistreatment. He was told unless he did confess to the crime of rape as aforesaid he would be continually subjected to such brutal mistreatment and intimidation until he did, in fact, confess to said crime. That your Petitioner was so fearful for his life, health and safety that he made a confession of said crime in the early morning hours of Wednesday, July 3, 1946. He was told by said police officers of the City of Prichard that if he made any mention of the fact that he was beaten and mistreated as aforesaid that he would be subjec. d to even more cruel beatings and mistreatment. That at approximately three o'clock in the morning of July 3rd, 1946 Petitioner was brought in to a carefully selected and arranged group for a formal confession of said crime of rape. That none of the persons who witnessed said formal confession which was later introduced in evidence on the trial of said cause as aforesaid, had any knowledge of the fact that Petitioner had been beaten, threatened, abused and mistreated by the police officers of the City of Prichard as aforesaid, in order to obtain said confession, with the exception of Prichard Police Sergeant "Buster" Wilkes who had participated in the beatings of Petitioner since his arrest on Saturday, June 29, 1946. That said Sergeant "Buster" Wilkes perjured himself on the trial of said cause by falsely testifying that Petitioner was not subjected to any mistreatment in connection with making said confession. Attached hereto and made a part hereof, marked "Exhibit A", is an affidavit of Johnnie Kimbrough, substantiating the above facts. Attached hereto and made a part hereof, marked "Exhibit B" is an affidavit of Lawrence Franklin, substantiating the above facts. Attached hereto and made a part hereof, marked "Exhibit

C'', is an affidavit of Calvin Jones, substantiating the above facts.

5. That your Petitioner was put in such great fear for his future safety after having been subjected to such mistreatment as aforesaid, and after having been threatened with even worse physical mistreatment by the police officers of the City of Prichard as aforesaid if your Petitioner did mention said beatings to any person, that he failed and refused by reason of such fear to mention this mistreatment and extortion of said confession from him to his attorney who was appointed by the Court to defend [fol. 5] him on the trial of said cause in the Circuit Court of Mobile County as aforesaid. That your Petitioner at that time was ignorant of his rights and was wholly ignorant of court procedure and had no knowledge of his rights or how to protect his interests. That when your Petitioner was asked by his said attorney who represented him on the trial of said cause as aforesaid if he was mistreated or beaten in any fashion by the law enforcement officers in connection with the giving of said confession he replied in the negative, being uneducated and ignorant as aforesaid, and fearful of further reprisals by said police officers. That while he — ably represented on the trial of said cause in the said Circuit Court of Mobile County, Alabama, by said attorney, his attorney was unaware of the facts averred above relating to said confession, and after having been told by your Petitioner that he was not subjected to any mistreatment, said attorney had no reason to inquire into the above facts and could not have through diligence discovered the above facts. That your Petitioner's present Counsel was not advised of the above facts until after Petitioner's conviction and the preparation and filing of a motion for a new trial and the overruling of motion for a new trial by the said Circuit Court of Mobile County and the appealing of Petitioner's case and the docketing of same and the decision of said Supreme Court of Alabama as aforesaid.

6. Your Petitioner further avers that his imprisonment, conviction and sentence of death and his present imprisonment is the result of a deprivation of due process of law and of his rights guaranteed to him by the Constitution of the State of Alabama and his conviction, sentence of death and his present imprisonment is the result of de-

privation of rights guaranteed to your Petitioner by the Constitution of the United States of America, in that the law enforcement officers of the State of Alabama obtained his conviction by the introduction in evidence at the trial of said cause of a confession which was forcibly extorted from your Petitioner as aforesaid, thereby denying to him due process of law and the rights guaranteed to him by and under the Constitution of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

7. Petitioner further avers that all the facts, circumstances and things alleged herein were unknown to Petitioner's attorney as aforesaid at the time of the trial of your Petitioner in the Circuit Court of Mobile County, Alabama and could not have been known to Petitioner's attorney by the exercise of reasonable diligence in time [fol. 6] to have otherwise presented the facts to the Trial Court.

Premises considered, your Petitioner prays that this Honorable Court will enter an order granting your Petitioner the right to file a Petition in the Circuit Court of Mobile County, Alabama, for a Writ of Error Coram Nobis to inquire into the facts alleged herein; and if the relief herein prayed for is not just, equitable and proper, then in the alternative your Petitioner prays for such, other, further, general or proper relief as may unto your Honors seem meet and proper. And in duty bound he will ever pray.

(Signed) Samuel Taylor.

(Signed) Nesbitt Elmore, Attorney for Petitioner.

STATE OF ALABAMA,
Montgomery County:

Before me, the undersigned authority in and for said State and County, personally appeared Samuel Taylor, who being made known to me and first duly sworn on his oath deposes and says: That the facts and matters set forth in the foregoing Petition are true and correct.

(Signed) Thomas S. Adair, Notary Public, State at Large. Notary Public, State at Large, Alabama. My Commission expires Feb. 7, 1951. Bonded by Standard Accident Insurance Co. of Detroit, Mich. (Seal.)

I hereby certify that I have served a copy of the foregoing Petition together with a copy of all exhibits contained therein on the Honorable A. A. Carmichael, Attorney General of Alabama, by placing a copy of the same in the United States mail properly addressed to him at the State Capitol, Montgomery, Alabama, postage prepaid, on this the 18th day of September, 1947.

(Signed) Nesbitt Elmore, of Counsel.

[fol. 7] EXHIBIT "A" TO PETITION

Montgomery, Alabama, September 17, 1947.

AFFIDAVIT OF JOHNNIE KIMBROUGH

My name is Johnnie Kimbrough. I am 22 years old. In June, 1946, I lived at 57 John Street in Prichard, Mobile County, Alabama. At the present time I am serving a ten year sentence for robbery in Kilby Prison at Montgomery, Alabama.

On the night of June 29, 1946, Saturday night, between 11 and 11:30, I was with Samuel Taylor, Lawrence Franklin and Calvin Jones on the streets of Prichard when two police officers of the City of Prichard in a squad car arrested the four of us and took us to jail. When we arrived in the docket room at the Prichard City Jail, the Desk Sergeant was not on duty. The four of us remained in the docket room until the Desk Sergeant returned. While we were waiting for his return, the officers who arrested us beat the other three boys including Sam Taylor but did not beat me. They whipped Samuel Taylor, Lawrence Franklin and Calvin Jones with clubs and blackjacks. I saw them whip Samuel Taylor with a club on his head and his arms. When the Desk Sergeant returned—he was Sergeant "Buster" Wilkes—the officers took us back to a dungeon and locked us up before we were docketed. They then brought us out one by one and beat each one of us. To the best of my recollection, Samuel Taylor was the first one the police officers took out of the dungeon. I could hear Sam holler and I also heard scuffling and blows being struck. I do not know where Sam was when he was being beaten, but

he was close enough to me for me to hear him holler. I do not know who was next taken out but I do know that I was the last one taken out of the dungeon. The officers took me in the docket room and beat me up pretty bad. They kept asking me questions about a robbery which I refused to confess.

After the officers were through beating me, they brought all four of us including Samuel Taylor back to the docket room where we were docketed. I was docketed on a robbery charge, but I do not know on what charge Samuel Taylor was booked. After we had been docketed, the police took Samuel Taylor and the other two boys back to their cells. [fol. 8] Sam's face was swollen bad. My head was pretty bloody and I was pretty dizzy. The officers sent me back to wash the blood off my head and when I returned they took me to the City Hospital in Mobile in a squad car. A Mobile City Hospital ambulance was sitting out front but the police did not use it. To the best of my recollection, it must have been around 1 or 1:30 in the morning of June 30th when the officers took me to the hospital. I stayed there twenty or thirty minutes and received medical attention and then the police brought me back to the Prichard jail. I was in pretty bad shape and I don't remember much about what happened during the next 24 hours.

On the night of Monday, July 1st and Tuesday, July 2nd, I heard the police beating Sam Taylor again and I heard him scream and holler many times. Since we were in separate cells I did not see Sam get beaten but I have been knowing him for some time and I know his voice when I hear it. I do not know why they continued to beat Sam on those two nights. I did not hear the police questioning Sam or hear any answers which he may have given, but I did hear him scream and holler. I heard scuffling and I heard blows being struck. I did not hear Sam holler anymore after that Tuesday night.

The next time I saw Sam Taylor was in October and November of 1946 when they brought him back from Kilby Prison and placed him in a cell with me right before our trial. Sam told me then that he had been beaten bad by the Prichard police for three or four straight nights.

I have read the foregoing statement consisting of two pages and the statements made therein are true and correct.
(Signed) Johnnie Kimbrough.

Subscribed and sworn to before me this 17th day of September, 1947. (Signed) Thomas S. Adair, Notary Public, State at Large. Notary Public, State at Large, Alabama. My commission expires Feb. 7, 1951. Bonded by Standard Accident Insurance Co., of Detroit, Mich. (Seal.)

[fol. 9] EXHIBIT "B" TO PETITION

Mobile, Alabama, September 11, 1947.

My name is Lawrence H. Franklin, Jr. I am 21 years of age. I live at 342 Rosedale Street, Lincoln Village, Prichard, Alabama. I live with my father.

On or about Saturday night, June 29, 1946, Samuel Taylor, Johnnie Kimbrough, Calvin Jones and I, were arrested on Craft Highway and Butler Avenue near 11 o'clock or 11:30 o'clock.

The four of us were taken to the Prichard jail in a scout car by police officers of Prichard. We were accused of having robbed a white man.

Even before we were put on docket, several of the Prichard police officers took us, one at a time, into an adjoining room to the docket room and beat each one of us.

They first took Calvin Jones into the room and kept him in there about ten or fifteen minutes. I was the next one taken into the little room. Two police officers were with me. They tried to make me say that I robbed the white man who had complained of being held up.

I told them that I didn't do it. One of the officers struck me with a black jack that was on a desk in the little room. I was not permitted to raise my hands to protect myself from the blows. I was struck so many times with the black jack and the officer's fists that my head was later so badly swollen that knots developed. Previous to my being taken into the little room, I had been beaten along with the other three boys arrested with me in the docket room. There I was knocked down and kicked in the stomach by members of the Prichard police force.

As a result of the two beatings that night my face was also bruised, and blood flowed freely from my nose.

Johnnie Kimbrough was the third one taken into the little room. When he came out of the room with the officers blood flowed from his head. He was evidently knocked unconscious by the officers' blows because he began to talk out of his head. An ambulance called at the police station but Johnnie had gained consciousness by that time, so the Prichard police would not permit him to be carried off. [fol. 10] I did notice that he had been shaved around the bruised places on his head, and I think it was believed at one time that his skull was fractured.

Samuel Taylor was the last one carried into the little room. Three policemen accompanied him. They kept him in there about fifteen minutes. When he came out I noticed that he was bleeding back of the ears, from the nose and the mouth. There was a visible bruise back of one of his ears. That night Samuel Taylor and I were placed in separate dungeons. The two other boys were placed in cells.

I heard police officers in Samuel's dungeon cell whipping him. I could hear blows being rained on his body. It was about three or four o'clock in the morning. As they beat Samuel they would ask him: "Didn't you do it?", evidently referring to the robbery about which there had been a complaint. At first Samuel said, "no, sir." Then later in what seemed to have been an almost breathless tone, he said, "yes, sir." The next week they got all of us out of our cells, lined us up in the docket room, and there was a white girl on the outside with a police officer.

She looked into the docket room, which was screened in, through the screen wire. The officer asked her something which I could not overhear, but he pointed toward me. She shook her head. Samuel Taylor was the next one pointed out. She nodded her head. The police sent Calvin Jones, Johnnie Kimbrough and me back to our cells. Samuel Taylor was taken elsewhere in the jail a distance from us. About an hour later I heard him holler as if in pain from being beaten. Almost every night he would holler. One night I heard noises coming from the direction where he was imprisoned, then I hear- him holler as he said, "no, sir, I didn't do it." Then I heard more noises as if someone was being knocked against the wall.

I was told that Samuel Taylor was moved to the Mobile county jail soon after that.

This statement was made on my own free-will and not under duress, and is a true account of the happenings following my arrest on Saturday night June 29, 1946.

(Signed) Lawrence H. Franklin, Jr.

Subscribed and sworn to before me, this 11th day of September, 1947. (Signed) Marshall F. Robinson, Notary Public. My commission expires 1950. (Seal.)

[fol. 11] EXHIBIT "C" TO PETITION

Mobile Alabama, September 11, 1947.

My name is Calvin Jones. I am 19 years of age. I live at 199 John Street, Prichard, Alabama. I am married and have two children.

On or about Saturday night, June 29, 1946, Lawrence H. Franklin, Samuel Taylor, Johnnie Kimbrough and I, were arrested on Craft Highway and Butler Avenue about 11 o'clock or 11:30 o'clock. The arrest was made by Prichard police officers in a scout car. We were taken to the Prichard jail on charges of having robbed a white man. Before we were put on docket about five or six of the Prichard police officers beat us up and knocked us down. Then I was taken into an adjoining room by two policemen who beat me with a club and their fists. They tried to force me to say that I had robbed the white man who reported that he had been held up by some colored men. I told them that I didn't do it. They kept me in the little room for about fifteen minutes.

Lawrence Franklin was the next one taken into the little room. When he came out of the room he had some knots on his head, his nose was bleeding and also his mouth.

Johnnie Kimbrough was next taken into the adjoining room. Blood was running out of his head.

Samuel Taylor was the last one taken into the little room. He was kept in there about fifteen or twenty minutes. His eyes were swollen, his nose and mouth were bleeding, and blood was also flowing from a bruise behind his ear.

We were then locked in separate cells, which I believe was done so we couldn't talk to each other.

I could hear someone hollering that night but I do not know who it was, as Johnnie Kimbrough and I were placed near each other.

The next week, I don't recall the day, all of us were taken out of our cells, lined up and taken up to the docket room.

A white girl and a police officer were on the outside. She whispered to the policeman. Then he pointed at me. She shook her head. Then the officer pointed toward Samuel Taylor. She bowed her head as if to say "yes."

They locked Lawrence, Johnnie and me up again in separate cells. They put Samuel in another part of the jail.

[fol. 12] About an hour or an hour and a half after that I heard Samuel holler.

I could hear the officers asking him, "didn't you do it?" He told them "no." They kept beating him and I finally heard him say "yes."

I heard them beating him again that week. I later learned that they sent him to town to the Mobile county jail.

This statement was made on my own free will and was not given under duress.

It is a true account of events following my arrest on Saturday night, June 29, 1946.

(Signed) Calvin Jones.

Subscribed and sworn to before me, this 11th day of September, 1947. (Signed) Marshall F. Robinson, Notary Public. My commission expires 1950. (Seal.)

[fol. 13] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

MOTION TO DISMISS PETITION FOR LEAVE TO FILE A PETITION FOR WRIT OF ERROR CORAM NOBIS—Filed September 25, 1947

Comes the State of Alabama, respondent in the above styled cause, and moves the court to dismiss the petition for leave to file a petition for writ of error coram nobis here-

tofore filed and for grounds of said motion states the following both severally and separately:

1. For that this court has judicial knowledge of the record of appeal to this court and the opinion of this court in the case wherein the petitioner, Samuel Taylor, was defendant and appellant in said appeal, and the State of Alabama was appellee in said appeal numbered First Division 297, which appeal was affirmed on the 24th day of April, 1947.

2. For that the allegations of said petition are not sufficient as a matter of law to cause this court to grant the relief therein prayed for.

3. For that the petition alleges facts that attempt to show that petitioner was convicted for the crime of rape in the Circuit Court of Mobile County on evidence of a confession obtained by force from petitioner and this court judicially knows that said confession was held by this court and the circuit court to be voluntary and admissible in evidence.

[fol. 14] 4. For that this petition is an attempt to retry an issue of fact, to-wit, whether or not the confession or confessions of petitioner to the crime of rape were voluntary or involuntary, which issue has been tried and decided adversely to petitioner both in the Circuit Court of Mobile County and in this court.

5. For that the allegations of the petition are patently unreasonable.

6. For that the allegations of the petition lack the probability of truth.

7. For that the allegations of the petition that petitioner was mistreated by police officers of Prichard, Alabama, and because of such mistreatment involuntarily confessed to said crime of rape are unreasonable or lack the probability of truth since this court judicially knows the circumstances under which said confessions were made.

8. For that this court and the Circuit Court of Mobile judicially know and have held that the said confessions of petitioner to the crime of rape were made by petitioner

under circumstances showing the voluntary nature thereof.

9. For that the allegations of the petition show that petitioner at the time of his trial knew of his alleged mistreatment and did not disclose such alleged facts to his counsel.

10. For that the allegations in the petition that counsel for petitioner at his trial did not know of petitioner's alleged mistreatment before the confession are unreasonable or lack the probability of truth since this court judicially knows from the said record on appeal that said counsel attempted to show such alleged facts on cross examination of witnesses who testified to the voluntary nature of said confessions.

11. For that this court judicially knows that at the trial of petitioner petitioner's counsel knew of the alleged mistreatment of petitioner as alleged in the petition.

12. For that this court judicially knows that at the trial of petitioner petitioner's counsel knew of the alleged mistreatment of petitioner but failed to prove such facts.

[fol. 15] 13. For that this court judicially knows that at the trial of petitioner it was proved that said confessions of petitioner were voluntarily made.

14. For that this court judically knows that the judgment of the Circuit Court of Mobile County adjudging petitioner guilty of rape was not based solely on the confession or confessions of petitioner.

15. For that this court judically knows that petitioner at his trial gave no proof tending to establish his innocence, and further that the petition does not allege a meritorious defense to the charge of rape.

16. For that said petition is an attempt by petitioner to question the merits of the case in which he was convicted for the crime of rape.

Wherefore, respondent, State of Alabama, moves this court to dismiss the petition for leave to file a petition for writ of error coram nobis.

(Signed) A. A. Carmichael, Attorney General; Bernard F. Sykes, Assistant Attorney General.

I hereby certify that I have mailed, properly stamped and addressed, a copy of the foregoing motion to Messrs. James, Elmore & Adair, opposing counsel, of Montgomery, Alabama, on this the 25 day of September, 1947.

(Signed) Bernard F. Sykes, Assistant Attorney General.

[fol. 16] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

Comes the State of Alabama and in support of its motion to dismiss the petition for leave to file a petition for writ of error coram nobis files the attached affidavit and exhibits thereto.

(Signed) A. A. Carmichael, Attorney General; Bernard F. Sykes, Assistant Attorney General.

I, Bernard F. Sykes, hereby certify that I have mailed a copy of the foregoing to Hon. Nesbitt Elmore, Attorney at law, Montgomery, Alabama, opposing counsel, on this the 29th day of October, 1947.

(Signed) Bernard F. Sykes, Assistant Attorney General.

[fol. 17] EXHIBIT IN SUPPORT OF MOTION TO DISMISS—Filed October 29, 1947

STATE OF ALABAMA,
Mobile County, ss:

AFFIDAVIT

My name is Nelson E. Grubbs, and I am Associate Toxicologist in the Department of Toxicology and Criminal Investigation, Mobile Division, for the State of Alabama. I am personally acquainted with Samuel Taylor who has been convicted for the crime of rape in Mobile County.

I am an experienced and skilled photographer, and I have examined eight photographs hereto attached and marked Exhibits A, B, C, D, E, F, G, and H, respectively. I took these photographs of Samuel Taylor on the 3 day of

July, 1946, at 5:37 P. M. o'clock. I developed the photographs, and the prints hereto attached.

These photographs were taken in Prichard, Alabama, at the time stated above. I know that Samuel Taylor made a statement in connection with the crime of rape immediately prior to the time that these photographs were taken by me.

These photographs are correct and represent faithfully the condition of the body of Samuel Taylor at the time above mentioned.

Nelson E. Grubbs.

STATE OF ALABAMA,
Mobile County, ss:

Personally appeared before me Nelson E. Grubbs, a Notary Public in and for said State and County, Nelson E. Grubbs, who is personally known to me, and after being first duly sworn states upon oath that the above statement is true and correct.

This the 28 day of October, 1947.

George R. Marsh, Notary Public for State at Large.

[fol. 18] [Exhibits A, B, C, D, E, F, G and H, respectively, are photographs and are attached to the original and cannot be copied here but can be forwarded on request to the Clerk of the Supreme Court of the United States.]

[fol. 19] Minute entry of argument and submission, October 29, 1947, omitted in printing.

[fol. 20] IN SUPREME COURT OF ALABAMA—OCTOBER TERM, 1947-48

1 Div. 308

EX PARTE SAMUEL TAYLOR

IN RE: SAMUEL TAYLOR,

vs.

STATE OF ALABAMA

Petition for Writ of Error Coram Nobis

OPINION—Filed November 13, 1947

GARDNER, Chief Justice:

This is a petition for the issuance of the common law writ of error coram nobis; the case being originally assigned to Mr. Justice Brown for study and preparation of an opinion.

Upon consideration of the cause in consultation, the members of the court were not in agreement with the views entertained by Mr. Justice Brown and of consequence a brief statement of the views of the majority is here appropriate.

The averments of the petition are set out with much detail in what is now the dissenting view of Justice Brown, and need no repetition here. The substance of the petition is that the confessions obtained from the defendant, Samuel Taylor, were involuntary as a result of threats and physical violence, from which he was placed in great fear and which fear continued up to and through the trial of the cause. This petition is sworn to and in support thereof are the affidavits of one Johnnie Kimbrough, now twenty-two years of age, serving a ten-year sentence for robbery at Kilby Prison in Montgomery; Lawrence H. Franklin, Jr., now twenty-one years of age, who was incarcerated in the jail in Prichard at the time this defendant was arrested; [fol. 21] and Calvin Jones, now nineteen years of age, and who was also under arrest and so incarcerated at the time of defendant's imprisonment. Upon this petition and these affidavits the court is asked to grant the writ of error coram nobis based solely upon the charge that the defend-

ant was under duress at the time the confessions were made.

It appears that presumably out of due caution the authorities had, soon after his arrest and immediately following his confession on July 3, had pictures of the defendant taken in a nude condition which are here exhibited, which disclose no indications on the body of any physical violence as set forth in the petition. But under the authorities this court is not to determine the truth of the allegations of the petition and we lay no particular stress upon the photographs here exhibited.

In passing upon the petition for writ of error coram nobis this court is in the exercise of a wise discretion and must look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof, and grant leave only when it appears that the proposed attack on the judgment is meritorious.—24 C. J. S. p. 152.

We are fully mindful of petitioner's rights under the due process clause of the Federal Constitution and the responsibility resting upon this court in cases of this character. We not only are mindful of responsibility so far as this defendant is concerned, but also feel like responsibility to society in the enforcement of the criminal laws of our state. In *Johnson* v. *Williams*, 244 Ala. 391, 13 So. (2d) 683, the petition sought for the first time to raise the question as to the regularity of the jury venire. This question was not presented upon the trial of the case. The holding there was that the objection came too late, and numerous authorities are cited to the effect that one may waive, and does waive his constitutional right, if he fails to assert or claim it at the appropriate time and place and in accordance to the established course of procedure. We therein further observed: "We have been cited to no case, either State or Federal, holding to a contrary doctrine. Indeed, such a principle, once recognized, would utterly destroy the doctrine of res adjudicata so far as criminal cases are concerned, reduce the trial of a defendant charged with crime [fol. 22] to a mere game of chance, and make a mockery of the courts."

Upon the trial of this cause the petition admits that the defendant was represented by able counsel. Upon a consideration of this cause in this court, as found reported

in *Taylor* v. *State*, — Ala. —, 30 So. (2d) 256, the counsel appointed by the court for the defense diligently presented the questions raised in the record both by oral argument and in full and complete brief, and a reading of the record, of which, of course, we take full notice here, (*Johnson* v. *Williams, supra*) demonstrates that the defendant was ably represented. The question of confessions was duly treated. There were two or three of these confessions made at different times, one of which was signed by the defendant. Not only so, but the defendant having before him three or four girls pointed out this fourteen year old victim of his crime as the one whom he had assaulted. The question of the voluntary character of the confession was duly considered and treated in the opinion on former appeal. Nor did the record contain the slightest indication that the defendant, a negro twenty years of age, was ignorant and in any manner subnormal.

The offense was committed in April, 1946, and defendant arrested the latter part of June of that year and on July 3, 1946, made his first confession. Later another confession was made before the Mayor of Prichard and others, in which he answered in detail the numerous questions asked by the solicitor. As pointed out on the former appeal this confession was also preceded by proof of its voluntary character. The record supports the holding as declared in the appeal that there existed not the slightest indication upon the trial of his case that there was a single threat offered or that he in any manner was under any character of duress upon the making of any of these confessions.

But in this case, as in the case of *Johnson* v. *Williams, supra*, defendant's conviction was not rested alone upon a confession. There was ample proof to sustain his conviction regardless of the confession. The fourteen year old girl positively identified him upon his arrest and upon the trial of the cause. She stated she knew he was the man. True she had mistakenly identified another negro, but she pointed out the difference and was most positive on the trial in her statement that this defendant was the perpetrator of the crime. Not only so, there was clothing iden-[fol. 23] tified as that of the defendant and worn on that occasion. The trousers worn by the defendant at the time were examined by the toxicologist, who testified to discovery of blood stains, as well as semen stains. Upon these matters there was no dispute.

We recognize that the defendant was in the exercise of a constitutional right in declining to take the stand and subject himself to cross-examination as a witness. But, nevertheless, in consideration of this petition we cannot close our minds to the fact that the defendant not only made no denial of his guilt but offered absolutely no proof as to his whereabouts when this crime was committed. And we should bear in mind the well established rule in considering petitions of this character, the writ is not intended to relieve a party from his own negligence, and that facts known to the accused at the time of trial and not brought to the court's attention through his negligence, afford no ground for relief.—24 C. J. S. p. 148. Petitioner now asks this court to permit the lower court to reopen this cause upon the grounds that his confessions were involuntary—a confession obtained on July 3, 1946, his trial not until October 29, 1946. He was represented, as he admits and as this court knows, by able counsel, and yet he states in his petition that he told his counsel that the confessions were voluntarily obtained. To excuse this conduct on his part he asks this court to believe that he so stated to his counsel because of fear generated by treatment he had received several months before, on July 3, 1946. Petitioner was a negro twenty years of age. The girl a white girl fourteen years of age. The trial was conducted with much care. There is nothing in the record on former appeal to indicate the slightest appeal to prejudice, nor was a single untoward incident recorded. We think it is asking entirely too much of the court to believe that this defendant, in the secrecy of consultation with his own able counsel, would say to counsel in substance that there was nothing upon which to base an objection to his confessions, solely because he was under fear generated by treatment which he claims was accorded him on July 3, nearly four months previous.

As we have observed, the court should look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. And it must also be made to appear that the proposed attack on the judgment [fol. 24] of conviction is meritorious. The writ was not designed to enable the guilty to escape punishment.—24 C. J. S. p. 143. As we have observed there was ample evidence, aside from the confessions, upon which a verdict of guilt could well be rested, and the averment of the petition that his conviction was rested upon the confessions is

unsustained by the record. The court should also bear in mind this writ is only due to be granted when it is made clearly to appear that petitioner has a valid defense.—24 C. J. S. p. 145. Giving due consideration to petitioner's constitutional right not to testify and upon the trial make a denial of his guilt, we nevertheless are impressed that in the carefully prepared petition here presented there appears no positive statement of denial of guilt or present protestation of innocence.

But we forego further discussion. Upon due consideration we conclude that the averments of the petition are unreasonable and that there is no probability of truth contained therein, and that the proposed attack upon the judgment is not meritorious.

We, therefore, conclude that the petitioner has not made out a case which calls upon this court to grant leave to file the writ of error coram nobis, and it will accordingly be here denied.

Petition denied.

Foster, Livingston, Lawson, Simpson and Stakely, JJ., Concur.

Brown, J., dissents.

DISSENTING OPINION

BROWN, Justice (Dissenting.)

This is an original application to this court for leave to file a petition for the common law writ of error coram nobis in the Circuit Court of Mobile County, wherein petitioner was tried and convicted of a capital felony and sentenced to suffer death by electrocution, which said judgment was affirmed here on the 24th day of April, 1947, the style of the case being *Taylor* v. *State*, 1 Div. 279, reported in 30 So. 2d 256.

The defendant's petition alleges that he was arrested by police officers of Prichard, Alabama, at 11:30 P. M. on June 29, 1946, and at the time of his arrest three other men, towit, Lawrence H. Franklin, Johnnie Kimbrough and Calvin Jones were also arrested and incarcerated in the city jail of Prichard, Ala. That before they were "docketed" or placed in a cell, police officers on duty at that time whose [fol. 25] names are unknown to petitioner "beat, kicked and bruised your petitioner and said three men in an effort to obtain a confession of a robbery. That after Petitioner

and the three other prisoners were docketed they were taken by said police officers one at a time in a small room in said jail. That all four of said men were brutally beaten, kicked and bruised in an effort to obtain said confession. That your Petitioner did, in fact, confess to said robbery but that after he had made this confession, he was retained in said room in the Prichard, Alabama, jail by said police officers and told that he must make a confession of the rape for which he was later convicted and sentenced by the Circuit Court of Mobile County as aforesaid. That he was further beaten, kicked and bruised by said police officers but refused to make a confession of said rape. That he was thereafter returned to his cell in the said City Jail at Prichard, Alabama, by said police officers at an early hour in the morning of Sunday, June 30, 1946. That he was not further molested throughout the day of said Sunday but that during the late hours of Sunday night, June 30, 1946, and early morning July 1, 1946, he was further beaten, bruised, threatened and intimidated by the police officers of the City of Prichard, Alabama, and was told he must confess to said rape. That your Petitioner still refused to make a confession of said crime although he was beaten, bruised and threatened as aforesaid. That said mistreatment and questioning by the police officers of the City of Prichard continued for a period of several hours and upon Petitioner's failure to confess to said crime he was again returned to his cell where he was left unmolested throughout the day of Monday, July 1, 1946. That on the night of Monday, July 1, 1946, and the early morning of Tuesday July 2nd, 1946, Petitioner was again subjected to similar mistreatment and questioning as on the previous night. Again your Petitioner maintained his innocence of said crime and after several hours was returned to his cell where he was left unmolested until the night of Tuesday, July 2 and early morning of Wednesday, July 3, 1946. On that night he was again visited by the police officers of the City of Prichard as aforesaid and was subjected to more brutal and cruel beatings and mistreatment. He was told unless he did confess to the crime of rape as aforesaid he would be continually subjected to such brutal mistreatment and intimidation until he did, in fact, confess to said crime. That [fol. 26] your Petitioner was so fearful for his life, health and safety that he made a confession of said crime in the early morning hours of Wednesday, July 3, 1946. He was

told by said police officers of the City of Prichard that if he made any mention of the fact that he was beaten and mistreated as aforesaid that he would be subjected to even more cruel beatings and mistreatment. That at approximately three o'clock in the morning of July 3rd, 1946, Petitioner was brought in to a carefully selected and arranged group for a formal confession of said crime of rape. That none of the persons who witnessed said formal confession which was later introduced in evidence on the trial of said cause as aforesaid, had any knowledge of the fact that Petitioner had been beaten, threatened, abused and mistreated by the police officers of the City of Prichard as aforesaid, in order to obtain said confession, with the exception of Prichard Police Sergeant 'Buster' Wilkes who had participated in the beatings of Petitioner since his arrest on Saturday, June 29, 1946. That said Sergeant 'Buster' Wilkes perjured himself on the trial of said cause by falsely testifying that Petitioner was not subjected to any mistreatment in connection with making said confession. Attached hereto and made a part hereof, marked 'Exhibit A,' is an affidavit of Johnnie Kimbrough, substantiating the above facts. Attached hereto and made a part hereof, marked 'Exhibit B' is an affidavit of Lawrence Franklin, substantiating the above facts. Attached hereto and made a part hereof, marked 'Exhibit C,' is an affidavit of Calvin Jones, substantiating the above facts.

"That your petitioner was put in such great fear for his future safety after having been subjected to such mistreatment as aforesaid, and after having been threatened with even worse physical mistreatment by the police officers of the City of Prichard as aforesaid if your Petitioner did mention said beatings to any person, that he failed and refused by reason of such fear to mention this mistreatment and extortion of said confession from him to his attorney who was appointed by the Court to defend him on the trial of said cause in the Circuit Court of Mobile County as aforesaid. That your Petitioner at that time was ignorant of his rights and was wholly ignorant of court procedure and had no knowledge of his rights or how to protect his interests. That when your Petitioner was asked by his said attorney who represented him on the trial of said cause as aforesaid if he was mistreated or beaten in any fashion by the law enforcement officers in connection [fol. 27] with the giving of said confession he replied in

the negative, being uneducated and ignorant as aforesaid, and fearful of further reprisals by said police officers. That while he (was) ably represented on the trial of said cause in the said Circuit Court of Mobile County, Alabama, by said attorney, his attorney was unaware of the facts averred above relating to said confession, and after having been told by your Petitioner that he was not subjected to any mistreatment, said attorney had no reason to inquire into the above facts and could not have through diligence discovered the above facts."

The petition further alleges that the attorney now representing petitioner had no connection with the case until after petitioner's conviction and the affirmation of the case by the Supreme Court of Alabama. And alleges that his "imprisonment, conviction and sentence of death and his present imprisonment is the result of a deprivation of due process of law and of his rights guaranteed, to him by the Constitution of the State of Alabama and his conviction, sentence of death and his present imprisonment is the result of deprivation of rights guaranteed to your Petitioner by the Constitution of the United States of America, in that the law enforcement officers of the State of Alabama obtained his conviction by the introduction in evidence at the trial of said cause a confession which was forcibly extorted from your Petitioner as aforesaid, thereby denying to him due process of law and the rights guaranteed to him by and under the Constitution of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America."

This application for leave to file the petition for writ of error coram nobis was submitted on the motion of the attorney general to dismiss the petition on numerous and sundry grounds, among others, that the "allegations of said petition are not sufficient as a matter of law to cause this court to grant the relief therein prayed for," together with affidavit of Nelson E. Grubbs, Associate Toxicologist, and photographs of the petitioner exhibited, which were taken on the 3rd day of July, 1946, at "5:37 P. M. o'clock," without countervailing evidence by affidavit or otherwise.

The effect of the motion to dismiss is to confess the truth of the allegations of the petition for the purpose of said motion.

The petition sets up facts extraneous of the record and is supported by the oath of petitioner and affidavits of three

[fol. 28] witnesses who claim to have knowledge of the facts and the affidavit of Nelson E. Grubbs, the Toxicologist, and the photographs taken according to his affidavit on "3rd day of July, 1946, at 5:37 P. M. o'clock." The verified petition, said affidavits and photographs will be treated as evidence.—*Ex Parte Green, Superintendent of Banks,* 221 Ala. 298, 129 So. 72.

It seems to be well settled that the writ of error coram nobis will not reach facts actually determined in the original proceeding nor will it lie when a proper remedy is afforded by appeal or ordinary writ of error nor for false testimony at the trial. The function of a writ of error coram nobis is limited to error of fact for which the statute provides no other remedy, which fact did not appear or was unknown to the court when judgment was pronounced and if known would have prevented the judgment and which was unknown and could not have been known to the petitioner by the exercise of reasonable diligence in time to have been otherwise presented to the court, *unless he was prevented from so presenting them by duress, fear or other sufficient cause.* This court is not called upon to determine the truth of the allegations of the petition for leave to file application for writ of error coram nobis in the circuit court. But will examine the petition in connection with the record in this court on appeal of said cause. The question presented to us is whether or not the allegations of the petition make adequate showing of substantiality of the petitioner's claim to enable the court to determine whether the facts alleged would afford *prima facie* just grounds for application to the circuit court, whether the allegations of the petition supported by the affidavits and other evidence show a probability of the truth thereof.—*Ex parte Burns,* 247 Ala. 98, 27 So. 2d 517; *Chambers et al.* v. *State,* 152 So. 437 (Fla.); *Ex parte Lee,* 248 Ala. 246, 27 So. 2d 147.

It is well settled in Alabama that extra-judicial confessions alleged to have been made by a defendant charged with crime are presumed to be involuntary and the burden is upon the state to show that they are voluntary.—*Jackson* v. *State,* 226 Ala. 72, 145 So. 656. In *Redd* v. *The State,* 69 Ala. 255 (259), it was observed:

"* * * The settled rule of this court is, that all such confessions are prima facie involuntary, and they can be rendered admissible only by showing that they

are voluntary and not constrained —, or, in other words, free from the influence of *fear* or *hope*, applied to the prisoner's mind by a third person.—[fol. 29] *Murphy* v. *The State*, 63 Ala. 1; *Johnson* v. *The State*, 59 Ala. 37; *Porter* v. *The State*, 55 Ala. 95; Clark's Man. Cr. Law, § 2480; Clark's Cr. Dig. § 326; 1 Brick, Dig. p. 509, § 859. It is no sufficient objection that they are elicited by mere adjurations to speak the truth, for this may be properly construed as advice to assert *innocence*, as well as to confess *guilt*. —*Aaron* v. *The State*, 37 Ala. 106; *King's case*, 40 Ala. 314; Whart. Cr. Ev. §§ 647, 672. Nor are confessions rendered inadmissible by the mere fact of being made to sheriffs, constables, jailors, or other officers of the law having the legal custody of the prisoner.—*Aaron's case, supra;* Whart. Cr. Ev. § § 647, 649. The true test is, whether, under all the surrounding circumstances, they have been induced by a threat of promise, express or implied, operating to produce in the mind of the prisoner apprehension of harm or hope of favor. If so, whether true or false, such confessions must be excluded from the consideration of the jury as having been procured by undue influence.—Whart. Cr. Ev. § 673; *Porter* v. *The State*, 55 Ala. 95. • • • ."

" '*So when a confession has been once obtained through the influence of hope or fear, confessions of a similar character subsequently made, as is uniformly held, may be inferred to have originated from the same motive, and in the absence of evidence to the contrary showing that the original influence had ceased, or been dispelled, they are inadmissible.*'—*Redd* v. *State, supra,* (69 Ala. 255); Note 6 Am. St. Rep. 249."—[Italics supplied.]—*Jackson* v. *State, supra.*

The record on petitioner's appeal shows that on the trial of the petitioner the state was allowed to prove alleged confessions made by the defendant by Mayor Dismuke, Ben Dixon, G. M. Porter and Chief of Police E. C. Anderson on predicates that at the time the confession was made in their presence, commencing on July 3rd at 3 o'clock A. M. and at other times subsequently thereto, that no abuse was administered, no threats made nor promises of reward or other inducements were made or offered to induce the

defendant to confess. While it appears that the attorney appointed by the court to represent the defendant on the trial strenuously cross-examined some of these witnesses as to what had previously occurred, the only admission that he obtained from any of them was from G. M. Porter, who gave the following answers to the following questions:

"Q. Had you been talking to him (the defendant) about this case?

"A. I had not.

"Q. Had anyone else to your knowledge been talking to him about this case?

"A. Not to my knowledge. I couldn't say. I know they had but I couldn't swear. * * *"

The witness Dismuke testified that the defendant when making his confession of the crime was friendly and was smiling.

[fol. 30] Sergeant Wilkes of the Police Department was examined by the state, his testimony going to show that he was on duty at the time of defendant's arrest and in charge of police headquarters and jail wherein petitioner was incarcerated after his arrest, and that the prosecuting attorney came to the jail at the time when the prosecutrix was present and five negro prisoners, including the petitioner, were brought in and lined up and carried into the office of the sergeant, apparently for the purpose of forcing the defendant to identify his alleged victim and give evidence against himself. —*Smith* v. *State*, 247 Ala. 354, 24 So. 2d 546. Sergeant Wilkes was not interrogated by the solicitor in respect to whether or not the defendant was abused, corporal punishment inflicted on him or whether he was made any offer of reward or hope of benefit to induce him to confess prior to the morning of July 3rd at 3 o'clock A. M. On cross-examination by defendant's attorney, Wilkes (referring to defendant) testified that the occasion on which the case was broken was 3 o'clock in the morning of July 3rd, 1946, the defendant's attorney asked the witness:

"Had you been, let us say, interrogating this boy prior to that time?

"A. I talked to him previous, about nine o'clock that night."

The witness was then asked:

"Q. And along about three he waw the light and decided he wanted to talk to you, is that right?"

(The solicitor objected to this question, was sustained and defendant's counsel withdrew the question).

"Q. Was it about three o'clock in the morning when he decided to talk to you about this case?

"A. Yes, sir.

"Q. And that was when you realized that the case had been broken was it?

"A. That is right. * * * *."

The photographs show marks on the defendant's body on his right side, on his neck, on his thigh and across his breast. Two of the photographs were taken when he exposed the right side of body to the camera; two exposed the front of his body; one exposed his back with the exception of his head from the ears up and his legs from the rump down. [fol. 31] In the pictures taken from his exposed left side, the top of his head from the hairline up was not shown and the last picture (Exhibit 8) was taken with two men standing belly to belly with the prisoner, the expressions on their faces indicating hostility with the prisoner apparently forcing his face into a smile. This photograph gives character to the testimony of the witness Dismuke that when petitioner was brought into his presence at 3 o'clock in the morning of July 3rd, he was smiling and very friendly. This, although he was at the time confessing his guilt of a crime that was calculated to send him to the electric chair.

The prisoner did not take the stand and testify in his own behalf. He could only become a competent witness at his own election, and by virtue of the statute his failure to so elect created no presumption "against him on his trial or other criminal proceedings."—Code of 1940, Title 15, § 305.

The petition considered in the light of the record shows a reasonable probability of the truth of the allegations in the petition and entitles petitioner to leave to seek relief in the trial court. —*Brown* v. *State*, 32 Ala. App. 500, 27 So. 2d 226; *Chambers et al.* v *State*, 152 So. 437 (Fla.); *Chambers* v. *State*, 187 So. 15. (Fla.). If the petitioner in his application must affirm his innocence and make proof rebutting the implications of guilt arising from the judgment of conviction procured by use of coerced confessions before he can obtain leave to file a petition for the writ of error coram nobis to establish want of due process under

the constitution, as the majority opinion holds, the guarantees of the constitution become as "sounding brass and tinkling cymbal"—mere platitudes—without force or substance and a defendant put on the "rack" and forced to confess his guilt is without remedy or hope. *Chambers et al.* v. *Florida*, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716.

I am, therefore, of the opinion that leave should be granted to petitioner to file his application for writ of error coram nobis in the Circuit Court of Mobile County wherein he was tried, convicted and sentenced to death and respectfully dissent.

[fol. 32] IN SUPREME COURT OF ALABAMA

Present Chief Justice Gardner, and Associate Justices Foster, Lawson and Stakely and Brown, Livingston and Simpson.

1 Div. 308

MOBILE CIRCUIT COURT

EX PARTE SAMUEL TAYLOR

PETITION FOR WRIT OF ERROR CORAM NOBIS

Re: SAMUEL TAYLOR,

vs.

STATE OF ALABAMA

JUDGMENT—November 13, 1947

Comes the petitioner by attorney, and the petition for an order granting leave to file a petition in the Circuit Court of Mobile County, Alabama, for a Writ of Error Coram Nobis, and the State's motion to dismiss the Writ of Error Coram Nobis being argued and submitted and duly examined and understood by the Court, it is considered, ordered and adjudged that permission to file a petition for Writ of Error Coram Nobis in the Circuit Court of Mobile County, Alabama, should be and is hereby denied.

It is further considered, ordered and adjudged that said petition be and the same is hereby denied.

It is further considered, ordered and adjudged that the costs incident to these proceedings be and the same are hereby taxed against petitioner, Samuel Taylor, for which costs let execution issue.

[Gardner, C. J., Foster, Livingston, Lawson, Simpson and Stakely, JJ., concur. Brown, J., dissents.]

• • • • • • •

[fol. 33] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

APPLICATION FOR REHEARING—Filed November 26, 1947

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Comes Samuel Taylor, Petitioner in the above styled cause, by and through his attorney of record, Nesbitt Elmore, and respectfully applies unto this Honorable Court for a re-hearing in the above styled cause, and respectfully assigns the following grounds, separately and severally, therefor:

1. There is manifest error in the opinion and judgment of the Court rendered on, to-wit: November 13, 1947 in form and manner as set out in Brief filed herewith, in support of this application.

2. Petitioner is aggrieved by the opinion rendered and judgment entered by this Honorable Court on, to-wit: November 13, 1947, in form and manner as set out in the Brief filed herewith in support of this application.

3. The Court has erred in refusing to grant the prayer of the Petitioner, as shown by Brief filed herewith.

4. As a result of the opinion and judgment of this Court rendered on, to-wit: November 13, 1947, Petitioner is being deprived of his liberty and is about to be deprived of his life, without due process of law in violation of the Constitution of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

Wherefore, Petitioner prays that the opinion rendered on, to-wit: November 13, 1947 by this Honorable Court be recalled and on further consideration of the cause the judgment of this Court be reversed and an order entered granting Petitioner leave to file his Petition in the Circuit Court of Mobile County, Alabama for a Writ of Error Coram Nobis.

Respectfully submitted, (Signed) Nesbitt Elmore, Attorney for Petitioner.

[fol. 34] I hereby certify that I have delivered a copy of the foregoing Application for Re-Hearing to the Honorable A. A. Carmichael, Attorney General of the State of Alabama, State Capitol, Montgomery, Alabama, by personally handing him a copy hereof, on this the 26 day of November, 1947.

(Signed) Nesbitt Elmore, Attorney for Petitioner.

[fol. 35] In Supreme Court of Alabama

[Title omitted]

Present Chief Justice Gardner, and Associate Justices Brown, Foster, Livingston, Lawson, Simpson and Stakely.

Order Denying Rehearing—December 4, 1947

It Is Ordered that the application for rehearing filed by Petitioner on November 26, 1947, after being duly examined and considered by the Court, be and the same is hereby overruled.

[fols. 36-37] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 38] SUPREME COURT OF THE UNITED STATES—OCTOBER TERM, 1947

No. 400, Misc.

SAMUEL TAYLOR, Petitioner,

vs.

STATE OF ALABAMA

On petition for writ of Certiorari to the Supreme Court of the State of Alabama.

ORDER GRANTING CERTIORARI—April 5, 1948

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is transferred to the appellate docket as No. 721.

FILE COPY

APR 28 1948
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Petitioner
not granted

No. 721

SAMUEL TAYLOR,
Petitioner,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

BRIEF FOR PETITIONER

THURGOOD MARSHALL,
NESBITT ELMORE,
Counsel for Petitioner.

EDWARD R. DUDLEY,
ARTHUR D. SHORES,
FRANKLIN H. WILLIAMS,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 721

SAMUEL TAYLOR,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent.

BRIEF FOR PETITIONER

The majority and dissenting opinions of the Supreme Court of Alabama appear in the record filed in this cause (R. 16-28) and are reported at ——Ala.——, 32 So. (2d) 659.

Jurisdiction

Jurisdiction of this Court is invoked under Sec. 237(b) of the Judicial Code (28 U. S. C. 344(b)), as amended February 13, 1925.

The date of judgment was the 4th day of December 1947, on which date the Supreme Court of Alabama overruled petitioner's application for rehearing in this cause (R. 30), after said court had, on the 13th day of November 1947, denied petitioner's application for leave to file a petition for writ of error *coram nobis* in the Circuit Court of Mobile

County, Alabama (R. 28). Petition for certiorari was filed on March 3, 1948 and was granted by this Court on April 5, 1948 (R. 31).

Summary Statement of Matter Involved

1. *Statement of Case*

Petitioner, Samuel Taylor, an ignorant Negro youth, was charged with having committed the crime of rape of a white girl; was tried, convicted and sentenced by the Circuit Court of Mobile County, Alabama, on the 19th day of November 1946. Judgment and sentence of death was imposed upon petitioner on the 19th day of November 1946. Petitioner is now confined in an Alabama state penitentiary under sentence of death, pursuant to the said judgment.

On the 24th day of April, 1947, the Supreme Court of Alabama affirmed the judgment of the Circuit Court of Mobile County, Alabama.

On September 18, 1947, petitioner applied to the Supreme Court of Alabama for leave to file an application for writ of error *coram nobis* before the Circuit Court of Mobile County, Alabama (R. 1). The petition and supporting affidavits alleged that the confession upon which petitioner's conviction was based was extorted by force and violence exerted against him by state officers; that he was ignorant of his rights at the time of trial and because of fear of reprisals did not advise his court-appointed attorney that the said confession was so extorted; that petitioner's new attorney was not advised of these facts until after petitioner's conviction, the preparation and filing of the motion for new trial, the overruling of said motion by the Circuit Court of Mobile County, Alabama, the appealing of petitioner's case and the docketing of same and the decision of said Supreme Court of Alabama as aforesaid (R. 1-11).

The State of Alabama moved to dismiss the said petition and the issue was thus submitted for determination of the court (R. 11-15). The Supreme Court of Alabama denied the application, holding that:

1) The proposed attack on the judgment lacked merit; and

2) The allegations of the petition were unreasonable and there was no probability of truth therein (R. 16-20).

3) Petitioner did not testify in the original trial and the petition did not contain a "positive statement of denial of guilt or present protestation of innocence."

The dissenting opinion pointed out that the writ of error *coram nobis* was proper to reach facts which were unknown to the court when judgment was pronounced and which the petitioner was prevented from presenting because of duress, fear or other sufficient cause and that in this case "the petition considered in the light of the record shows a reasonable probability of the truth of the allegations in the petition and entitles petitioner to leave to seek relief in the trial court" (R. 20-28).

In this Court, petitioner asserts that his constitutional right to due process of law was violated by the action of the Supreme Court of the State of Alabama in denying him permission to file an application for writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama.

2. *Statement of Facts*

The details surrounding the obtaining of the alleged confession from petitioner, upon which his conviction below was based, appear in the petition for writ of error *coram nobis* and the supporting affidavits (R. 1-11). Counsel for petitioner representing him on the filing of his petition for leave to file an application for writ of error *coram nobis* did

not represent him at his trial in the Circuit Court of Mobile County, Alabama. Petitioner, as alleged in his petition to the Supreme Court of Alabama, because of fear of bodily harm, failed to inform the attorney representing him at his trial of the circumstances surrounding the obtaining of the said alleged confession (R. 4). The said attorney could not have known of these facts by the exercise of reasonable diligence in time to have presented them to the trial court (R. 4). After final affirmance of his conviction by the Supreme Court of Alabama, petitioner's present counsel was requested to intervene. Petitioner's present attorney obtained affidavits supporting petitioner's allegations of cruel and inhuman treatment from three other individuals who were arrested and confined at the same time as petitioner. These affidavits were submitted in support of his petition to the Supreme Court of the State of Alabama (R. 6, 8, 10). The petition and affidavits showed that petitioner and three (3) other Negro youths were arrested by police in Prichard, Alabama, near midnight on the night of June 29, 1946 (R. 2). They were taken to the City Jail at Prichard, Alabama, and subjected to cruel, brutal and inhuman treatment by several police officers in an attempt to obtain from them a confession to having committed a robbery. The other three Negro youths were detained in the City Jail without further molestation for several days. Petitioner, however, was subjected to continuous beating and mistreatment by police officers of the city of Prichard for a period of four consecutive nights. The purpose of the said beatings and questioning was to force petitioner to confess to an alleged rape which the said police officers accused him of having committed (R. 2-3).

After this mistreatment continued for a period of four nights, petitioner, in great fear for his life, health and safety, confessed to having committed the crime of rape. He was told at this time by these officers that if he made

mention of the fact that he had been beaten and mistreated, he would be subjected to even more beatings and mistreatment. After having made such confession, a group of outside responsible people of the community, who were without knowledge of the gross brutality and mistreatment to which petitioner had been subjected, was brought into the jail at Prichard, Alabama, at 3 o'clock on the morning of July 3, 1946, where petitioner was coerced through fear of further reprisals to again confess in the presence of these people in a staged, prearranged atmosphere (R. 3).

As stated in his petition, "Petitioner was put in such great fear for his future safety after having been subjected to such mistreatment * * *, and after having been threatened with even worse physical mistreatment by the police officers * * * if * * * (he) * * * did mention said beatings to any person, that he failed and refused by reason of such fear to mention this mistreatment and extortion of said confession from him to his attorney who was appointed by the Court to defend him * * *" (R. 4).

In spite of the strong *prima facie* case set forth by the petitioner in his petition and supporting papers presented to the Supreme Court of Alabama, permission to apply for a writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama, was denied by a divided court (R. 28).

Question Presented

Whether, in view of the facts alleged in the petition and supporting affidavits submitted to the Supreme Court of Alabama, the denial of opportunity to the petitioner to apply for a writ of error *coram nobis* to the court convicting him constituted a violation of petitioner's constitutional rights as guaranteed by the Fourteenth Amendment.

Errors Relied Upon

The Supreme Court of Alabama erred:

In denying petitioner's application for leave to apply for a writ of error *coram nobis* to the Circuit Court of Mobile County, Alabama, and:—

a) In holding that the facts contained in the said application and supporting affidavits were not reasonable; and,

b) In holding that said allegations lacked the probability of truth; and,

c) In giving weight to the failure of petitioner to testify at his trial and to affirmatively allege his innocence in his petition.

Outline of Argument

I.

The Supreme Court of Alabama erred in Denying Petitioner's Motion for Leave to File a Petition for a Writ of Error *Coram Nobis*.

A. The conviction of petitioner through the use of a confession extorted by force, violence and fear is a violation of the Fourteenth Amendment.

B. The refusal to permit petitioner to file a petition for a writ of error *coram nobis* to raise this question and to introduce testimony in support thereof at a hearing free from fear was a denial of due process.

Summary of Argument

Petitioner herein asserts that his constitutional right to the due process of law has been denied by the action of the Supreme Court of Alabama in dismissing his petition for permission to file a writ of error *coram nobis* with the court convicting him.

Petitioner's conviction was based upon an alleged confession obtained by officers of the State of Alabama through the unlawful use of force, duress and intimidation, as stated by this Court in a long line of cases outstanding among which is *Chambers* v. *Florida*, 309 U. S. 227.

The State of Alabama has recognized the writ of error *coram nobis* as a form of relief available to individuals unlawfully confined. The denial of the substance of relief to petitioner without opportunity given him to submit proof in support of the allegations contained in his petition for permission to file a writ of error *coram nobis* has deprived him of his due process of law.

Argument

The Supreme Court of Alabama Erred in Denying Petitioner's Motion for Leave to File a Petition for a Writ of Error Coram Nobis.

A. The Conviction of Petitioner through the Use of a Confession Extorted by Force, Violence and Fear is A Violation of the Fourteenth Amendment.

The principle referred to by this Court in the case of *Hysler* v. *Florida*,[1] that conviction upon a confession "wrung from an accused by overpowering his will, whether through physical violence or the more subtle forms of coercion commonly known as 'the third degree'" is offensive to our constitutional guarantee of due process and violates "civilized standards for the trial of guilt or innocence" is fundamental in our law. The principle has been reiterated by this Court in a long and unbroken line of decisions.[2] The

[1] 315 U. S. 411, 413.

[2] *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227; *Canty* v. *Alabama*, 309 U. S. 629; *White* v. *Texas*, 309 U. S. 631, 310 U. S. 530; *Lomax* v. *Texas*, 313 U. S. 544; *Vernon* v. *Alabama*, 313 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219; *Ward* v. *Texas*, 316 U. S.

principle is controlling even though the alleged confession is not the sole basis for the conviction.[3]

B. The Refusal to Permit Petitioner To File a Petition for A Writ of Error Coram Nobis to Raise this Question and to Introduce Testimony in Support Thereof At a Hearing, Free from Fear Was a Denial of Due Process.

Assuming the truth of the allegations contained in the petition before the Supreme Court of Alabama herein (R. 1), which assumption was effected by the state's motion to dismiss,[4] there can be no dispute that the principle discussed above is applicable to petitioner's conviction. The validity of this principle was recognized by the Alabama Supreme Court (R. 17) yet permission to file application for writ of error *coram nobis* was denied petitioner.

Though the common-law writ of error *coram nobis* was adopted by the State of Alabama,[5] pursuant to the mandate of this Court contained in the case of *Mooney* v. *Holohan*,[6] its relief has usually been denied to petitioners seeking hearings after conviction on alleged constitutional violations occurring during trial.[7]

The State of Alabama has established the rule that *habeas*

547; *Ashcraft* v. *Tennessee*, 322 U. S. 143; *Lyons* v. *Oklahoma*, 322 U. S. 596; *Malinski* v. *New York*, 324 U. S. 401; *Lee* v. *Mississippi*, 92 L. Ed. —; *Haley* v. *Ohio*, —; 92 L. Ed. —.

[3] *Malinski* v. *New York*, *supra*, *Lee* v. *Mississippi*, *supra*.

[4] "The effect of the motion to dismiss is to confess the truth of the allegations of the petition for the purpose of said motion." Dissenting opinion, *Taylor* v. *State*, 32 So. (2d) 659 (R. 23).

[5] *Johnson* v. *Williams* (1943), 13 So. (2d) 683.

[6] 294 U. S. 103.

[7] *Johnson* v. *Williams*, *supra*; *Redus* v. *Williams* (1943), 13 So. (2d) 561; *Ex Parte Burns* (1945), 22 So. (2d) 517; *Ex Parte Lee* (1946), 27 So. (2d) 147.

corpus will lie only where the invalidity of the judgment appears on the face of the record of the trial.[8]

In Alabama the only procedure available to challenge a judgment on the grounds of facts not appearing on the face of the record is by means of a petition to the Supreme Court of Alabama for leave to petition the Circuit Court where the conviction was obtained for a writ of error *coram nobis* to review the judgment.[9]

If the requirements for the granting of this form of relief are so strict as to require refusal of relief in a case where the constitutional violation is as clearly alleged as herein, then the remedy offers "no substantial hope of relief." [10]

As stated by this Court in discussing the "procedural labyrinth" obtaining in the State of Illinois:

> ". . . the remedies available there are inadequate. Whether this is true because in fact no remedy exists, *or because every remedy is so limited as to be inadequate*, ... is beside the point. If the federal guarantee of due process in a criminal trial is to have real significance, . . . it is imperative that men convicted in violation of their constitutional rights have an adequate opportunity to be heard in court." [11] (Italics ours.)

No such "adequate opportunity" for a hearing in court has been given petitioner in this case.

The statement contained in the dissenting opinion below accurately reflects petitioner's position before this Court:

> "If the petitioner in his application must affirm his innocence and make proof rebutting the implications of guilt arising from the judgment of conviction procured by use of coerced confessions before he can

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[8] *Vernon* v. *State*, 240 Ala. 577, 200 So. 560; *Johnson* v. *Williams*, *supra*.

[9] *Johnson* v. *Williams*, *supra*.

[10] *Marino* v. *Ragen*, 92 L. Ed. —.

[11] *Marino* v. *Ragen*, *supra*.

obtain leave to file a petition for the writ of error *coram nobis* to establish want of due process under the Constitution, as the majority opinion holds, the guarantees of the Constitution become as 'sounding brass and tinkling cymbal'—mere platitudes—without force or substance and a defendant put on the 'rack' and forced to confess his guilt is without remedy or hope."

There was no direct conflict between the allegations contained in the petition before the Alabama Supreme Court and the facts of the record. At petitioner's trial, no proof was offered as a predicate for the introduction of the alleged confession. Rather, there was merely a lack of proof of duress because the effect of the same coercion and intimidation used to force the confession from petitioner still made itself felt upon him.

The petition submitted to the Alabama Supreme Court "establishes on its face the deprivation of a federal right."[12] It is submitted that instead of offering a remedy therefor, the Supreme Court of Alabama, through its refusal to grant permission for the filing of an application for writ of error *coram nobis*, deprived petitioner of his only avenue of relief from this unconstitutional conviction "without giving petitioner an opportunity to prove his allegations."[13] This denial has deprived petitioner of relief even in the federal courts as such courts ordinarily do not entertain habeas corpus proceedings setting forth substantially the same facts as have been previously brought before a state court by writ of error *coram nobis* or in an habeas corpus proceeding.

The Alabama Court erred in denying petitioner relief on the grounds that some testimony appeared in the record that the confession was voluntary and that petitioner had

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[12] *Williams* v. *Kaiser*, 323 U. S. 471.

[13] *Williams* v. *Kaiser, supra; Tompkins* v. *Missouri*, 323 U. S. 485.

failed to testify at the original trial. As stated by Mr. Justice Murphy in the case of *Lee* v. *Mississippi*, supra.

> ". . . And since our constitutional system permits a conviction to be sanctioned only if in conformity with those principles, inconsistent testimony as to the confession should not and cannot preclude the accused from raising the due process issue in an appropriate manner. . . . Indeed, such a foreclosure of the right to complain 'of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void,' . . . would itself be a denial of due process of law."

Petitioner's papers were sufficient to constitute a *prima facie* case and require the granting of permission to apply for the writ, followed by a hearing in substantiation of the allegations.[14]

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[14] "Habeas corpus is a remedy available in the courts of Kansas to persons imprisoned in violation of rights guaranteed by the Constitution of the United States. Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. They are supported by the exhibits referred to above, and nowhere are they refuted or denied. The record of petitioner's conviction, while regular on its face, manifestly does not controvert the charges that perjured evidence was used, and that favorable evidence was suppressed with the knowledge of the Kansas authorities. *No determination of the verity of these allegations appears to have been made.* The case is therefore remanded for further proceedings." *Pyle* v. *Kansas*, 317 U. S. 213 (1942) (italics ours).

"Whatever inference of waiver could be drawn from the petitioner's plea of guilty is adequately answered by the uncontroverted statement in his position that he did not waive the right either by word or action. This . . . squarely raised a question of fact . . . A defendant who pleads guilty is entitled to the benefit of counsel, and a request . . . . is not necessary. It is enough that a defendant . . . is incapable adequately of making his defense . . . *Whether all these conditions* exist is a matter which must *be determined by evidence where the facts are in dispute.*" *Rice* v. *Olsen*, 324 U. S. 786 (1945) (italics ours).

While the majority of this Court in the *Hysler* [15] case sustained the state court's refusal to issue the order, the case is easily distinguishable from the instant case, and in fact the instant case falls within the offensive violations of constitutional guarantees as outlined by Mr. Justice Frankfurter for the majority in stating guides for decisions of this nature. In the *Hysler* case, petitioner in alleging denial of due process four years after conviction based his claim for relief on the recantation of one of the witnesses against him. In commenting upon this basis for petitioner's relief, this Court stated:

> "Hysler's claim before the Supreme Court of Florida was that Baker repudiated his testimony insofar as it implicated Hysler and that he now named another man as the instigator of the crime. Considering the fact that this repudiation came four years after leaden-footed justice had reached the end of the familiar trail of dilatory procedure, and that Baker now pointed to an instigator who was dead, the Supreme Court of Florida had every right and the plain duty to scrutinize this repudiation with a critical eye, in the light of its familiarity with the facts of this crime as they had been adduced in three trials, . . ."

The instant case is clearly distinguishable from the above in that, far from presenting a collateral attack upon the judgment of the court, petitioner alleges that he *personally* was brutally beaten, intimidated and coerced by state officers to the point of not only confessing to a crime which he did not commit but to such a degree that the fear for his life sealed his lips in communications with his court-appointed attorney. In addition, petitioner in his application for writ of error *coram nobis* filed at the earliest possible time

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[15] *Hysler* v. *Florida*, 315 U. S. 411 (1942).

presented the affidavits of three other persons arrested with him, all of whom alleged substantially the same set of facts surrounding the mistreatment accorded petitioner while in the custody of state officers. There is no question of recantation of perjured testimony here but rather a request for an opportunity to be heard for the first time at a time and a place not permeated with fear, intimidation and threats for one's safety which, in itself, is the very essence of due process.

The denial to petitioner of this opportunity for a hearing upon his allegations constitutes reversible error requiring remedial action by this Court.

Conclusion

The State of Alabama, while purporting to follow the requirements of due process as set forth by this Court in *Mooney* v. *Holohan, supra,* has by practice, effectively denied to petitioner the very type of corrective judicial process required by this Court.

The life of an American citizen hangs in the balance. This Court should, in view of this, "insist upon the fullest measure of due process." [16] If the petitioner is denied the opportunity to present proof of the denial of his constitutional right to due process, then as stated by Justice Brown in his dissenting opinion below:

> "Guarantees of the Constitution become as 'sounding brass and tinkling cymbal'."

It is respectfully requested that this Court reverse the decision of the Supreme Court of the State of Alabama

[16] *Carter* v. *Illinois,* 329 U. S. 173.

denying petitioner leave to apply for a writ of error *coram nobis* to the Circuit Court of Mobile County, Alabama.

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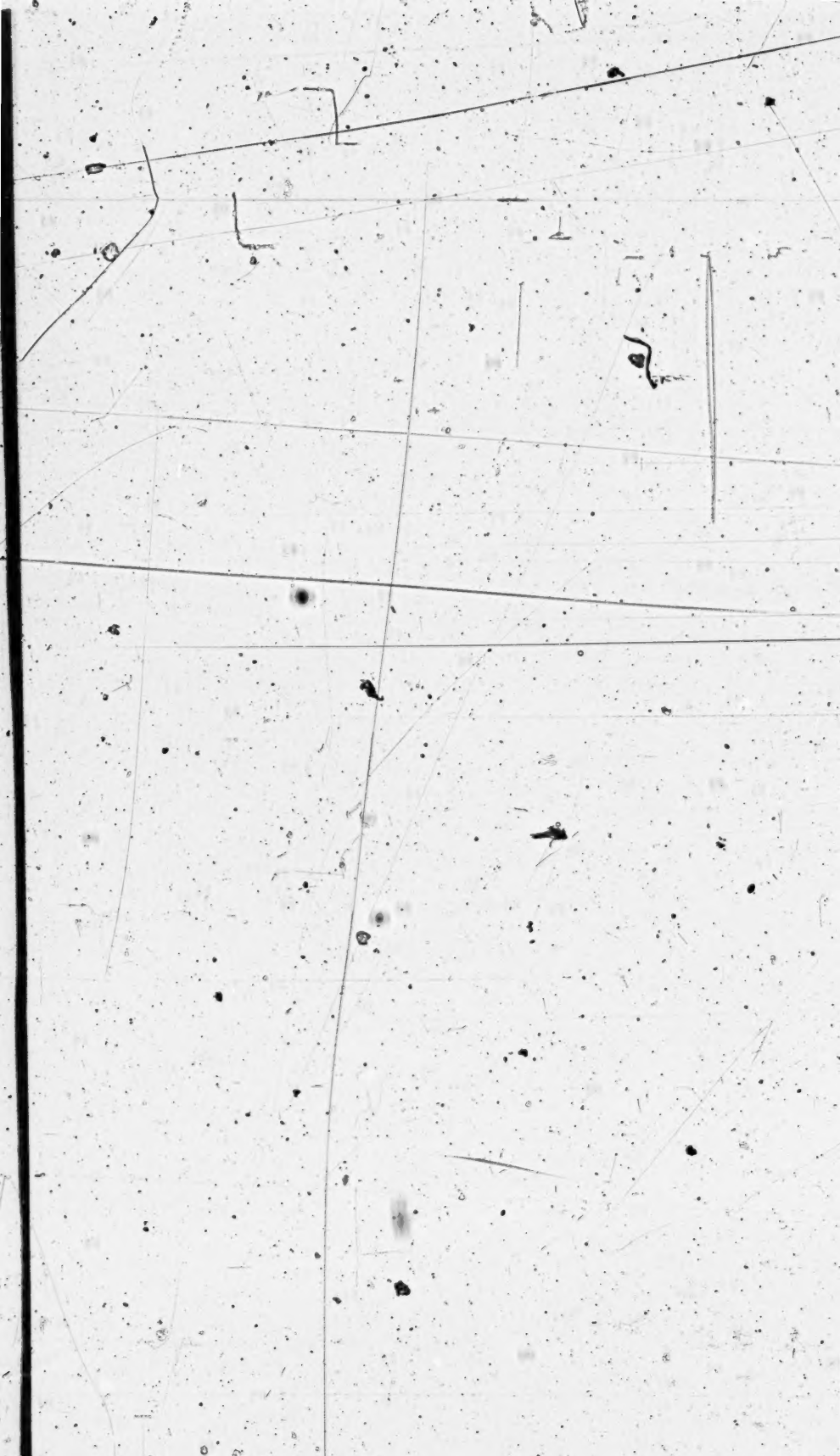

No. 721

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

~~NO. 400 MISCELLANEOUS~~

SAMUEL TAYLOR,

Petitioner

V.

THE STATE OF ALABAMA,

Respondent

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS OF THE COURT BELOW

Opinion of the Supreme Court of Alabama in the original criminal case on appeal is reported as follows: Taylor v. State, —— Ala. ——, 30 So. 2d 256. There was no application for rehearing.

Opinion of the Supreme Court of Alabama in coram nobis proceedings is reported as follows: Ex Parte Samuel Taylor, In Re Samuel Taylor v. State of Alabama, 1st Div. 308, Supreme Court of Alabama, November 13, 1947, —— Ala. ——, 32 So. 2d 659 (Advanced Pamphlet No. 8), rehearing denied December 4, 1947, 32 So. 2d 659 (Advanced Pamphlet No. 8).

II.

JURISDICTION

Petitioner has applied for writ of certiorari to the Supreme Court of Alabama to review the judgment of said court rendered on November 13, 1947, refusing to grant leave to petitioner to petition the trial court for writ of error coram nobis, and judgment of said court denying petitioner a rehearing on December 4, 1947, under the provisions of Section 257(b) of the United States Judicial Code, as amended by Act of February 13, 1925, 43 Stat. 937, 28 U. S. C. A., Section 344(b).

III.

STATEMENT OF CASE

(When this brief was printed no printed record nor designation of the contents of such record had reached respondent. We have been as definite as possible in our references.)

Samuel Taylor, a twenty year old negro, was convicted in the Circuit Court of Mobile County on November 19, 1946, for the crime of rape. His victim was a fourteen year old white girl. His punishment was fixed at death.

Petitioner appealed to the Supreme Court of Alabama where the judgment of conviction was affirmed on the 24th day of April, 1947. Taylor v. State, —— Ala. ——, 30 So. 2d 256. Samuel Taylor did not apply for a rehearing in the Supreme Court of Alabama.

The record in the criminal appeal discloses that there was no motion for a new trial. Petitioner, Samuel Taylor,

was later denied clemency by the Governor of the State of Alabama, but was granted a reprieve from the execution of the death sentence until September 19, 1947.

On the eve of his execution, September 18, 1947, an application for leave to petition the Circuit Court of Mobile County, Alabama, for writ of error coram nobis was filed in the Supreme Court of Alabama.

In substance, the petition so filed in the Supreme Court of Alabama for leave to petition the Circuit Court of Mobile County, Alabama, for writ of error coram nobis alleges: (1) That the petitioner was convicted for the crime of rape on the basis of a confession introduced in evidence at his trial; (2) that said confession was involuntary and was obtained by force; (3) that petitioner, by reason of fear, failed to disclose to his attorney the fact that said confession was involuntary; and (4) that petitioner should now be allowed by this court to establish the involuntary nature of the confession in the trial court, and thereby have the judgment of guilty vacated.

The State of Alabama moved to dismiss the petition on substantially the following grounds:

1. The Supreme Court of Alabama, having judicial knowledge of the record on appeal in the criminal case, judicially knows the circumstances under which petitioner confessed to the crime of rape.

2. That the Supreme Court of Alabama and the Circuit Court of Mobile County, the trial court, have already adjudicated that the confession (or confessions) were voluntary and admissible in evidence, and being so adjudicated, cannot and should not now be subject to retrial under the principles governing the writ of error coram nobis.

3. That in view of the testimony in the record on appeal in the criminal case showing the voluntary nature of the confession, the allegations in the present petition are not reasonable or lack probability of truth.

4. That in view of the record in the criminal case, and especially the cross-examination by petitioner's counsel, petitioner's counsel must have known, and must have been told by petitioner at the time of the trial, the alleged facts showing petitioner's mistreatment, and hence that the allegations of the petition alleging no such knowledge by petitioner's counsel are unreasonable or lack the probability of truth.

5. That the Alabama Supreme Court, by reason of the record in the criminal case, judicially knows that petitioner's conviction was not based solely on the confession but on other testimony; hence had the facts been known to the court, namely, the facts alleged by petitioner constituting mistreatment, such disclosure would not have prevented the entry of a judgment of guilty.

6. That petitioner, neither at his trial nor in allegations of the petition, shows a meritorious defense.

The petition filed in the Alabama Supreme Court was supported by affidavits of three other negro men who were arrested and committed at the same time as petitioner. These affidavits tend to show that Samuel Taylor was beaten at regular intervals for three days prior to his first confession.

In support of its motion to dismiss the petition, the State of Alabama filed as exhibits eight photographs of the petitioner, Samuel Taylor, taken in the nude at various angles. These photographs are shown by affidavit to have

been taken by the Associate State Toxicologist immediately after the confession was made on July 8, 1946, and disclose no indication of physical violence or bodily injuries.

The petitioner introduced no further affidavits or evidence or any other showing in opposition to these photographs, and did not challenge their authenticity, or the fact that said photographs were made immediately after the confession. The Supreme Court of Alabama denied the application for leave to petition for writ of error coram nobis on the grounds that the allegations of the petitioner were not reasonable and lacked the probability of truth. Taylor v. State, —— Ala. ——, 32 So. 2d 659.

The petitioner's application for rehearing was denied without further opinion by the Supreme Court and petitioner now seeks to have the judgment of the Alabama Supreme Court reviewed on writ of certiorari, contending that the judgment of the Supreme Court of Alabama has deprived him of life or liberty without due process of law, and has denied to him the equal protection of the laws.

IV.

BRIEF AND ARGUMENT

This respondent, of course, does not take issue with the proposition that if a state, through its responsible officials, attempts to take away the life or liberty of a citizen by the use of a confession obtained by force, such action violates his rights under the due process clause of the Fourteenth Amendment. Haley v. Ohio, Supreme Court of United States, October Term, 1947, No. 51 (January 12, 1948). That is not the issue in this case. Neither do we dispute at this time the power of the Supreme Court of the United States to grant certiorari and reverse a conviction of a state court when a confession obtained by

force is used in evidence, even though that confession does not form the basis of the conviction. Malinski v. New York, 324 U. S. 401, 89 L. Ed. 1029. The issue to be decided here is whether or not, under the particular facts in this case, the State of Alabama has denied the petitioner a fair hearing and a fair trial by refusing to allow the petitioner to set up new and additional facts concerning an allegedly forced confession, when the Supreme Court is convinced that the allegations are unreasonable and lack a probability of truth.

It is the purpose of this brief and argument to demonstrate that the State of Alabama has not deprived the petitioner of life or liberty without due process of law, nor denied to him the equal protection of the laws.

A. ALABAMA AFFORDS A REMEDY TO PERSONS CONVICTED OF CRIME WHO CONTEND THAT THEIR TRIAL WAS CONDUCTED IN A MANNER IN DISREGARD OF CIVILIZED STANDARDS AND NOT AMOUNTING TO A FAIR HEARING UNDER THE DUE PROCESS CLAUSE.

The common law writ of error coram nobis is available in the State of Alabama. Johnson v. Williams, 244 Ala. 391, 13 So. 2d 683; Ex Parte Burns, 247 Ala. 98, 22 So. 2d 598; Smith v. State, 245 Ala. 161, 16 So. 2d 315; Ex Parte Lee, 248 Ala. 246, 27 So. 2d 147, cert. den. Lee v. Alabama, 329 U. S. 808, 67 S. Ct. 621; Redus v. Williams, 244 Ala. 459, 13 So. 2d 561, cert. den. 320 U. S. 773, 88 L. Ed. 464, 65 S. Ct. 85; Taylor v. State, —— Ala. ——, 32 So. 2d 659.

The requirements and necessary allegations for obtaining relief are now well known. Johnson v. Williams, supra; Ex Parte Burns, supra.

Briefly stated, a writ of error coram nobis is available to persons convicted of a crime in Alabama, when they contend that some error of fact occurred at the trial, which error of fact was not known to the court, or to the counsel, or to the parties at the time of the trial, and which, if it had been known, would have prevented the rendition of judgment. It is fundamental that an application for coram nobis cannot set up facts in contradiction of the record, nor be used in an attempt to re-litigate or an attempt to re-determine facts which have already been decided. **Johnson v. Williams, supra; Ex Parte Burns, supra.**

The necessary allegations and requirements for obtaining coram nobis are accurately set forth in the Alabama decisions, and such decisions do not set up a "procedural labyrinth" for the "strangling of constitutional rights." **Marino v. Ragen,** Supreme Court of United States, October Term, 1947, No. 93 (December 22, 1947). In addition to the other requirements for obtaining the writ as outlined above, the Alabama procedure requires that after affirmance of a criminal case a writ of coram nobis should be filed in the appellate court. See **Johnson v. Williams, supra.** This was done in the instant case. In addition to the other requirements and essentials for obtaining the writ the petitioner must convince the appellate court that his allegations are reasonable and contain a probability of truth. **Johnson v. Williams, supra.** In exercising its discretion to grant or refuse the writ, the appellate courts of the State of Alabama examine the petition not only to see whether a prima facie case has been made out, but also to see whether or not those particular allegations are reasonable and are probably true or untrue. Such a requirement cannot be said to be unreasonable, because the relief asked by the petition is extraordinary, and if granted without close scrutiny would completely disrupt the administration of justice. Criminals could always invent reasons to apply for the writ, and prevent indefinitely the execution of sentence.

In considering a petition for coram nobis, the appellate courts of Alabama take judicial knowledge of the record on the original criminal appeal and other records in connection with the coram nobis proceedings. **Johnson v. Williams, supra; Ex Parte Burns, supra.**

Contrary to the contention in the petitioner's brief, a motion to dismiss a petition for writ of error coram nobis does not admit as true, even for the purpose of argument, the allegations in the petition. Obviously, if the court is to decide whether the allegations are reasonable, and whether the allegations are probably true, a pleading filed by the State, and in this case a pleading specifically setting up the fact that the allegations are probably untrue, could not, by any stretch of the imagination, be said to admit the allegations in the petition. The controlling issue to be decided by the State Supreme Court is whether or not the allegations are probably true. **Johnson v. Williams, supra.** The motion filed by the State has no such effect, as contended in petitioner's brief.

Contrary to the contention in petitioner's brief, leave to file a petition for writ of error coram nobis has been granted by the appellate courts of Alabama. **Brown v. State, 32 Ala. App. 500, 27 So. 2d 226.**

It may be true that the Supreme Court of Alabama is strict in granting relief in coram nobis proceedings, but the answer to such contention is that the relief requested should be granted with caution. The few cases involving writs of coram nobis in the Alabama Supreme Court do not afford a broad enough picture for counsel to conclude that the Supreme Court of Alabama never will grant a petition for error coram nobis. The Supreme Court of Alabama is committed by its decisions, and when the proper case arises will grant the writ.

When it appears that those convicted of crimes are merely trifling with justice in an attempt to delay the execution of sentence, and the allegations of the petition are untrue and unreasonable, then relief will never be granted.

It is clear, therefore, that the State does afford a remedy for a person convicted to set up additional facts that were not known at the time of the trial, which could not have been known by reasonable diligence, and which, if they had been known, would have prevented rendition of judgment.

B. IN AFFORDING SAID REMEDY (CORAM NOBIS), THE SUPREME COURT OF ALABAMA DOES NOT DEPRIVE PERSONS OF LIFE OR LIBERTY WITHOUT DUE PROCESS OF LAW WHEN IT REQUIRES A PETITIONER TO MAKE AN ADEQUATE AND SUBSTANTIAL SHOWING THAT THE FACTS ALLEGED ARE REASONABLE AND CONTAIN THE PROBABILITY OF TRUTH.

In the case of Hysler v. Florida, 315 U. S. 411, 86 L. Ed. 932, 62 S. Ct. 688, decided by this court on March 2, 1942, this court held, in reviewing the denial of a petition for leave to file a petition for writ of error coram nobis in the Florida Supreme Court, that the Florida court had formulated the following rule in exercising discretion in granting or refusing writs of coram nobis:

"In the exercise of its discretion in matters of this sort the court should look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. . . . ."

It was further held in the Hysler case, supra, that coram nobis, including the above quoted rule, afforded "ample machinery for correcting the constitutional wrong." Alabama has the same machinery. Hysler v. Florida, supra, has not been overruled, and has been followed in both state and federal courts. Baker v. State, 150 Fla. 446, 7 So. 2d 792; Tinkoff v. United States, C. C. A. 7th, 129 F. 2d 21; Spaulding v. United States, C. C. A. 6th, 155 F. 2d 119.

The machinery used by Florida and by Alabama to afford a remedy to persons claiming that their constitutional rights have been violated has been held to be adequate. Hysler v. Florida, supra. In the operation of this machinery in this particular case, has the State of Alabama denied to the petitioner due process of law or equal protection of the laws?

C. THE SUPREME COURT OF ALABAMA HAD SUBSTANTIAL REASONS FOR HOLDING THAT THE APPLICATION FOR LEAVE TO PETITION FOR WRIT OF ERROR CORAM NOBIS WAS NOT REASONABLE AND LACKED THE PROBABILITY OF TRUTH.

In the case of Hysler v. Florida, supra, this court not only decided that the Florida coram nobis proceedings in a general way afforded due process, but this court also explored the foundations of the Florida decision holding that the petitioner had "failed to make the showing of substantiality." If this court is inclined to examine the reasons underlying the holding of the Alabama court in this case, to the effect that the allegations of the petition are probably untrue and are unreasonable, we call the attention of this court to the following items:

The Supreme Court of Alabama, at the time that it decided that the petition for writ of error coram nobis was

unreasonable and lacked the probability of truth, had before it and took judicial notice of the record in the original criminal case, Johnson v. Williams, supra; Ex Parte Burns, supra. In the last cited case, the Supreme Court of Alabama stated its rule:

> "We will look to the petition, in the light of the records of this court, to see if it meets the requirements of the foregoing authorities. Are the allegations of the petition reasonable and what is the probability of their truth? We take judicial knowledge of the records of this court."

The records of the Alabama Supreme Court showed that the confessions were made voluntarily. Taylor v. State, —— Ala. ——, 30 So. 2d 256.

It was alleged in the petition that Samuel Taylor was beaten at regular intervals for three days preceding his confession early on the morning of July 3, 1946. It is alleged in the petition that he was brutally beaten. The photographs introduced by the State showed unmistakably that Samuel Taylor had not been so brutally beaten. In fact, they showed that he had not been beaten at all. Ex Parte Taylor, In re Samuel Taylor v. State of Alabama, —— Ala. ——, 32 So. 2d 659 (Adv. Pam. No. 8), 1st Div., Supreme Court of Alabama, Nov. 13, 1947, rehearing denied 32 So. 2d 659 (Adv. Pam. No. 8), December 4, 1947.

This court may ask why were such photographs taken at a time immediately after the first confession took place. It is sufficient to state that this is not the first time that a member of the colored race has falsely contended that he was brutally beaten and convicted by the use of a forced confession. Perhaps the best way to prove the falsity of such charge is to show by photographic evidence that the person who claims that he was beaten so brutally was

not, in fact, injured at all and had no marks on his body. This was done in the Supreme Court of Alabama. Six out of seven justices on that court decided that the photographs "disclosed no indication on the body of any physical violence as set forth in the petition." One justice who wrote the dissenting opinion mistakenly found otherwise. The photographs which were not included by the petitioner in his record in this court, are available.

With this evidence before the Supreme Court of Alabama, how could it believe that Samuel Taylor had been beaten as he alleged in the petition?

It should also be considered by this court, in exploring the reasons underlying the State court's decision that the petition was probably untrue, that this petition was filed on September 18, 1947, the day before petitioner was to be executed on the following midnight. The petitioner asked the Supreme Court of Alabama not only to believe that the petitioner had been beaten for three days prior to his confession, but Taylor further asked the Alabama court to say that it was probably true that he had been afraid to tell his counsel or anyone else about the alleged brutality and torture from the time he was arrested until shortly before the time set for his execution. This time extended from July, 1946, when the torture is said to have been inflicted, through the time of the trial, November 19, 1946, four months later, through the time of the appeal decided about five months later, April 24, 1947, and then approximately five months more until shortly before the filing of the petition for coram nobis, on September 18, 1947.

During this time, the petitioner was not in the custody of those who, he contends, beat him. He was taken from the Pritchard jail to Mobile for his trial, and after his trial was taken to Kilby Prison in Montgomery. During

these intervening months, he was not in the presence of his alleged torturers, and had a full opportunity to consult his counsel. He does not contend in any way that any person other than the Pritchard police tortured him.

Having been sentenced to death on November 19, 1946, and having been removed to the State Penitentiary hundreds of miles away from the place where he was allegedly tortured, the petitioner asks the Supreme Court of Alabama to believe that he was afraid during this entire time to tell counsel. The Supreme Court of Alabama was justified in doubting the veracity of such a contention.

There is nothing in the whole record in this case to indicate that the defendant was subnormal in intelligence. This fact is recited in the opinion of the Supreme Court of Alabama. **Ex Parte Taylor, In re Samuel Taylor v. State of Alabama, supra.**

In connection with the petitioner's contention that he was constantly in fear from disclosing the facts of the alleged torture from July 3, 1946, until shortly before the filing of the petition on September 18, 1947, it should be pointed out that there is no supporting affidavit attached to the petition by the petitioner's trial counsel, Mr. Henry Aldridge of Mobile, Alabama, confirming the alleged fact that he was not told by the petitioner that he was tortured and beaten. We believe the lack of this affidavit is significant. One of petitioner's contentions is that he was afraid to tell his counsel. If this fact had been true, certainly an affidavit to that effect could have been obtained and could have been most convincing. The record in the original criminal appeal indicates that trial counsel was most diligent in cross-examining witnesses who testified about the confessions. Trial counsel asked searching questions to determine whether or not the petitioner had been threatened or molested in any way prior to the time the confessions

were made. The question of the voluntary nature of the confessions was completely explored on the original trial of this case and treated in the opinion of the Supreme Court of Alabama in the criminal appeal. It was decided that the confessions were properly introduced in evidence, there being no evidence whatsoever that the confessions were involuntary, and there being ample evidence to show that the confessions were vountarily and freely given.

We do not contend that petitioner's allegation of innocence was an essential allegation of the petition. We do point out, however, that such an allegation or the lack of such allegation can be taken into consideration by the Supreme Court in exercising its discretion in granting writs of coram nobis. The writ was not designed to release the guilty. The petitioner did not allege in the petition in the State court that he was innocent or that he was not guilty. He has not added that allegation to his petition for certiorari in the Supreme Court of the United States. The petitioner has nowhere, even at his trial, shown that he was not guilty. He did not take the stand. He presented no alibi. He not only made three separate and distinct confessions, but drew a map with his own hand showing the location of the crime. He identified the victim from among several girls shown to him for that purpose. The petitioner offered no meritorious defense on trial, offered no meritorious defense on coram nobis proceedings in the State court, and offers none now. Petitioner merely contends that on the eve of his execution he suddenly remembered that he had been beaten, and suddenly remembered that he had been afraid to tell about the beatings for many months. The Supreme Court of Alabama was justified in refusing to believe that such a contention had a probability of truth or was reasonable.

The petitioner was ably represented at his trial by counsel. On appeal to the Alabama Supreme Court, he was likewise ably represented. Counsel not only filed briefs,

but argued the case orally before the Supreme Court of Alabama. The only fair conclusion that can be reached by this court is that the Supreme Court of Alabama had ample and sufficient grounds for refusing to allow petitioner to trifle with justice by allowing him to attempt to prove palpably false allegations.

D. IN DENYING THE PETITION FOR LEAVE TO FILE CORAM NOBIS PROCEEDINGS IN THE TRIAL COURT, THE SUPREME COURT OF ALABAMA DID NOT DENY PETITIONER THE EQUAL PROTECTION OF THE LAWS.

We do not believe that this is a serious contention in this case. There is no showing or any evidence whatsoever that Taylor has been "singled out for invidious treatment" by the Alabama Supreme Court. It is further apparent that it is not a fact that the Alabama Supreme Court has granted applications in other cases but not in this one. The claim of a denial of equal protection is without substance. **Hysler v. Florida, supra.**

CONCLUSION

(1) The State of Alabama furnishes ample procedure to correct errors of fact such as the conviction on the basis of an involuntary confession, when such fact was not known at the time of the trial, could not have been ascertained by the exercise of reasonable diligence, and which, if such fact had been known, would have prevented the rendition of judgment. (2) In affording this remedy, the Supreme Court of Alabama does not deny due process of law by setting up the requirements that the allegations of such facts must satisfy the Supreme Court that such facts are reasonable and contain a probability of truth. (3) The

reasons underlying the denial of coram nobis in this case are substantial and convincing, and it cannot be said that the Supreme Court of Alabama, in denying the relief asked, deprived the petitioner of life or liberty without due process of law.

It is respectfully submitted that the petition for writ of certiorari should be denied.

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Attorney General,

COUNSEL FOR RESPONDENT.

BERNARD F. SYKES, and

JAMES L. SCREWS,

Assistant Attorneys General.

CERTIFICATE

I hereby certify that I have forwarded a copy of the foregoing brief to Thurgood Marshall, 20 West Fortieth Street, New York, N. Y., and Nesbitt Elmore, Professional Center Building, Montgomery, Alabama, attorneys for petitioner, on this the 20 day of March, 1948.

ATTORNEY FOR RESPONDENT.

A. A. CARMICHAEL,

Attorney General of Alabama.

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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

NO. 721

SAMUEL TAYLOR
PETITIONER

v.

THE STATE OF ALABAMA
RESPONDENT

BRIEF AND ARGUMENT FOR RESPONDENT

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IN THE

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SAMUEL TAYLOR
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THE STATE OF ALABAMA
RESPONDENT

BRIEF AND ARGUMENT FOR RESPONDENT

I.

OPINIONS OF THE COURT BELOW

Opinion of the Supreme Court of Alabama in the original criminal case on appeal is reported as follows: **Taylor v. State,** ——Ala.——, 30 So. 2d 256. There was no application for rehearing.

Opinion of the Supreme Court of Alabama in coram nobis proceedings is reported as follows: **Ex Parte Samuel Taylor, In Re Samuel Taylor v. State of Alabama,** 1st Div. 308, Supreme Court of Alabama, November 13, 1947, ——Ala.——, 32 So. 2d 659 (Advanced Pamphlet No. 8), rehearing denied December 4, 1947, 32 So. 2d 659 (Advanced Pamphlet No. 8). The same opinion appears in the record filed in this case (R. 16-28).

II.

JURISDICTION

Petitioner has applied for writ of certiorari to the Supreme Court of Alabama to review the judgement of said court rendered on November 13, 1947, refusing to grant leave to petitioner to petition the trial court for writ of error coram nobis, and judgment of said court denying petitioner a rehearing on December 4, 1947, under the provisions of Section 257(b) of the United States Judicial Code, as amended by Act of February 13, 1925, 43 Stat. 937, 28 U. S. C. A., Section 344(b).

III.

STATEMENT OF CASE

Samuel Taylor, a twenty year old negro, was convicted in the Circuit Court of Mobile County on November 19, 1946, for the crime of rape. His victim was a fourteen year old white girl. His punishment was fixed at death.

Petitioner appealed to the Supreme Court of Alabama where the judgment of conviction was affirmed on the 24th day of April, 1947. **Taylor v. State, —— Ala. ——,** 30 So. 2d. 256. Samuel Taylor did not apply for a rehearing in the Supreme Court of Alabama.

The record of the original criminal appeal is not now before the Supreme Court of The United States. The Supreme Court of Alabama had the record in the original criminal case before it and took judicial notice of the contents of said record in deciding the cause now before this court. **Ex Parte In Re Samuel Taylor v. State of Alabama,** 32 So. 2d 659 (R. 18). Since the facts contained in this record of the original criminal case formed at least in part a basis for the judgement now sought to be re-

viewed (R. 18), we offer to furnish to this court a certified copy of the record, if this court so requests.

The record in the criminal appeal discloses that there was no motion for a new trial. Petitioner, Samuel Taylor, was later denied clemency by the Governor of the State of Alabama, but was granted a reprieve from the execution of the death sentence until September 19, 1947.

On the eve of his execution, September 18, 1947, an application for leave to petition the Circuit Court of Mobile County, Alabama, for writ of error coram nobis was filed in the Supreme Court of Alabama.

In substance, the petition so filed in the Supreme Court of Alabama for leave to petition the Circuit Court of Mobile County, Alabama, for writ of error coram nobis alleges: (1) That the petitioner was convicted for the crime of rape on the basis of a confession introduced in evidence at his trial; (2) that said confession was involuntary and was obtained by force; (3) that petitioner, by reason of fear, failed to disclose to his attorney the fact that said confession was involuntary; and (4) that petitioner should now be allowed by this court to establish the involuntary nature of the confession in the trial court, and thereby have the judgment of guilty vacated.

The State of Alabama moved to dismiss the petition on substantially the following grounds:

1. The Supreme Court of Alabama, having judicial knowledge of the record on appeal in the criminal case, judicially knows the circumstances under which petitioner confessed to the crime of rape.

2. That the Supreme Court of Alabama and the Circuit Court of Mobile County, the trial court, have already adjudicated that the confession (or confessions) were

voluntary and admissible in evidence, and being so adjudicated, cannot and should not now be subject to retrial under the principles governing the writ of error coram nobis.

3. That in view of the testimony in the record on appeal in the criminal case showing the voluntary nature of the confession, the allegations in the present petition are not reasonable or lack probability of truth.

4. That in view of the record in the criminal case, and especially the cross-examination by petitioner's counsel, petitioner's counsel must have known, and must have been told by petitioner at the time of the trial, the alleged facts showing petitioner's mistreatment, and hence that the allegations of the petition alleging no such knowledge by petitioner's counsel are unreasonable or lack the probability of truth.

5. That the Alabama Supreme Court, by reason of the record in the criminal case, judicially knows that petitioner's conviction was not based solely on the confession but on other testimony; hence had the facts been known to the court, namely, the facts alleged by petitioner constituting mistreatment, such disclosure would not have prevented the entry of a judgment of guilty.

6. That petitioner, neither at his trial nor in allegations of the petition, shows a meritorious defense.

The petition filed in the Alabama Supreme Court was supported by affidavits of three other negro men who were arrested and committed at the same time as petitioner. These affidavits tend to show that Samuel Taylor was beaten at regular intervals for three days prior to his first confession.

In support of its motion to dismiss the petition, the State of Alabama filed as exhibits eight photographs of the petitioner, Samuel Taylor, taken in the nude at various angles. These photographs are shown by affidavit to have been taken by the Associate State Toxicologist immediately after the confession was made on July 3, 1946, and disclose no indication of physical violence or bodily injuries. The original photographs have been forwarded to the Clerk of the Supreme Court of the United States.

The petitioner introduced no further affidavits or evidence or any other showing in opposition to these photographs, and did not challenge their authenticity, or the fact that said photographs were made immediately after the confessions. The Supreme Court of Alabama denied the application for leave to petition for writ of error coram nobis on the grounds that the allegations of the petitioner were not reasonable and lacked the probability of truth. **Taylor v. State,** ——Ala.——, 32 So. 2d 659 (R. 16-28).

The petitioner's application for rehearing was denied without further opinion by the Supreme Court and petitioner now seeks to have the judgment of the Alabama Supreme Court reviewed on writ of certiorari, contending that the judgement of the Supreme Court of Alabama has deprived him of life or liberty without due process of law, and has denied to him the equal protection of the laws.

In his brief filed after the order of this court granting certiorari, petitioner has apparently abandoned his contention that he has been denied equal protection of the

laws, and contends solely that he has been deprived of his liberty and will be deprived of his life without due process of law.

IV.

BRIEF AND ARGUMENT

SUMMARY OF ARGUMENT

1.

In Alabama, when an involuntary confession is used to convict a person charged with a crime, it violates that person's rights under the Fourteenth Amendment, and such a conviction is reversed.

Huntley v. State,
(Supreme Court of Alabama, March 4, 1948.)
—— Ala. ——, 34 So. 2d 216.

Haley v. Ohio,
Supreme Court of United States, No. 51,
October Term, 1947 (January 12, 1948).

Malinski v. New York,
324 U. S. 401, 89 L. Ed. 1029.

Chambers v. Florida,
309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716

2.

Alabama may regulate the procedure of its courts in accordance with its own conception of policy and fairness, unless it offends some principle of justice ranked as fundamental.

Snyder v. Massachusetts,
291 U. S. 97, 54 S. Ct. 330,
78 L. Ed. 674, 90 A. L. R. 575.

Frank v. Mangum,
237 U. S. 309, 59 L. Ed. 969,
35 S. Ct. 582.

3.

Alabama has decided (a) that "after guilt has been determined by the ordinary process of trial and affirmed on appeal, a later challenge to its essential justice must come . . . before a bench of judges rather than before a jury," and (b) that a person in Alabama who claims that his incarceration is due to "failure to observe that fundamental fairness essential to the very concept of justice, even after his sentence has been duly affirmed by the highest court of the State, has full opportunity to have a jury pass on such a claim, provided he first makes an adequate showing of the substantiality of his claim to the satisfaction of the Supreme Court of Alabama.

Hysler v. Florida,
315 U. S. 411, 86 L. Ed. 932.

Johnson v. Williams
244 Ala. 39, 13 So. 2d, 683.

Redus v. Williams,
244 Ala. 459, 13 So. 2d 561, cert. den.
320 U. S. 775, 64 S. Ct. 85, 88 L. Ed. 464.

Smith v. State,
245 Ala. 161, 16 So. 2d 315.

Ex Parte Burns,
247 Ala. 98, 22 So. 2d 517, cert. den.
Burns v Alabama, 326 U. S. 765, 90 L. Ed. 461.

Ex Parte Lee,
248 Ala. 246, 27 So. 2d 147, cert. den.
67 S. Ct. 621.

Taylor v. State,
32 So. 2d 659 (R. 16-28).

4.

In exercising its discretion to allow a retrial, the Supreme Court of Alabama looks to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof.

Johnson v. Williams,
244 Ala. 391, 13 So. 2d 683.

Ex Parte Burns,
247 Ala. 98, 22 So. 2d 517, cert. den.
326 U. S. 765, 90 L. Ed. 461.

Ex Parte Lee,
248 Ala. 246, 27 So. 2d 147, cert. den.
67 S. Ct. 621.

5.

A motion to dismiss a petition for leave to file a petition for writ of error coram nobis does not admit, even for the purpose of argument, the truth of the allegations of the petition.

Johnson v. Williams,
244 Ala. 391, 13 So. 2d 683.

Ex Parte Burns,
247 Ala. 98, 22 So. 2d 517, cert. den.
326 U. S. 765, 90 L. Ed. 461.

Ex Parte Lee,
248 Ala. 246, 27 So. 2d 147, cert. den.
67 S. Ct. 621.

6.

The remedy of the common law writ of error coram nobis was the proper and adequate remedy in this case.

Johnson v. Williams,
244 Ala. 391, 13 So. 2d 683.

Taylor v. State,
—— Ala. ——, 32 So. 2d. 659 (R. 16-28).

7.

The Supreme Court of Alabama was justified in denying leave to petition for writ of error coram nobis in this case on the grounds that the allegations in the petition were unreasonable and lacked a probability of truth.

Hysler v. Florida,
315 U. S. 411, 86 L. Ed. 932.

Johnson v. Williams,
244 Ala. 391, 13 So. 2d 683.

Ex Parte Burns,
247 Ala. 98, 22 So. 2d 517, cert. den.
326 U. S. 765, 90 L. Ed. 461.

The allegations in the petition did not contain a probability of truth and were unreasonable for the following reasons:

(a) Petitioner was not "ignorant" nor appeared to be in any manner subnormal (R. 18).

(b) Petitioner was represented by competent, diligent, and skilled counsel, both at his trial and on appeal, where his case was presented by written brief and by oral argument (R. 18). **Taylor v. State, —— Ala. ——, 30 So. 2d 256.**

(c) The voluntary nature of the confessions, both oral and written, was established by competent and unimpeached witnesses. **Taylor v. State**, —— Ala. ——, 30 So. 2d 256; see also record of original criminal case offered.

(d) The record of the original criminal case indicates that by cross-examination petitioner's counsel attempted to show a coerced confession, but was unable to do so.

(e) There was no affidavit of petitioner's trial counsel attached to the petition stating that petitioner failed to inform trial counsel of his alleged mistreatment.

(f) The petitioner was not under the constant surveillance of Pritchard police officers from the time of his arrest on June 29, 1946, to the time of the filing of his petition for coram nobis on September 18, 1947, the day before his execution.

(g) The petitioner had every opportunity to complain of his alleged mistreatment to the witnesses who heard the confession in July, 1946, to his counsel at the time of trial on November 19, 1946, and to his counsel on appeal which was decided April 24, 1947, and to his present counsel employed after the appeal April 24, 1947, and before the filing of petition for coram nobis on September 18, 1947.

(h) The affidavits attached to the petition are not worthy of belief.

(i) The photographs exhibited to the Alabama Suprem Court and taken at the time that petitioner contends that he had been brutally beaten and tortured for three days indicate the utter falsity of the allegations.

1.

The issue to be decided in this case is **not** whether a conviction obtained by an involuntary confession should be set aside. The law on that subject is well known and considered as fundamental. **Huntley v. State, supra; Chambers v. Florida, supra.**

3.

Since the petitioner in this case had been convicted of rape and such conviction had been affirmed, Alabama procedure required a petition for leave to petition the trial court for a writ of error coram nobis. **Johnson v. Williams, supra; Hysler v. Florida, supra.**

This is the Alabama remedy for the correction of an error of fact which was not known at the time of the trial, and which could not have been known by the exercise of reasonable diligence. Further, the fact must be such that had it been known at the trial it would have prevented the rendition of judgment. **Johnson v. Williams, supra; Ex Parte Burns, supra.**

The Alabama procedure is similar to the Florida procedure **(Hysler v. Florida, supra)**, and as stated in the **Hysler** case is designed to meet the requirements referred to in **Mooney v. Holohan, 294 U. S. 103.** We interpret those requirements to be that a State must furnish some fair legal process for the correction of a judicial wrong resulting in an unfair conviction, when that wrong is based on a fact outside of the record and does not appear in the record because of some excusable mistake or neglect, or ignorance of the defendant, his counsel, or the court.

Habeas corpus in Alabama does not reach this type of error because the facts are outside the record. **Johnson v. Williams, supra.**

So, in Alabama if a person who has been convicted of crime advances or alleges some material fact that he was prevented from showing or could not show at his trial, he may be entitled to a new trial to satisfy the requirements of due process.

Certain considerations are immediately obvious. (1) The remedy affects the administration of criminal justice. (2) It could be easily abused. (3) It is a means of setting aside an otherwise valid judgment at a time when memories have faded, witnesses are unavailible. (4) When petitioners are prompted by instincts of self-preservation rather than truth telling. Hysler v. Florida, supra. On the other hand, if the remedy is properly administered by the courts, it becomes one of the great and remedial writs, unlocking the prison doors and freeing the oppressed.

7.

On September 18, 1947, for the first time—some 14 months after his arrest— Samuel Taylor states that he was brutally beaten for three days preceding his confession on July 3, 1946. He further states for the first time that he was so intimidated by Pritchard officers that he was afraid to tell his attorney about his mistreatment when he was asked about it (R. 4). Now we submit that the allegations of mistreatment and the duration of this fear does not contain a probability of truth; we submit that such allegations are unreasonable. If the Supreme Court of Alabama was justified in so finding due process has been accorded. Hysler v. Florida, supra.

Samuel Taylor did not remain in the Pritchard, Alabama, jail all of these 14 months. He was in the presence of the Mayor of Pritchard, the Chief of Police, and the

Circuit Solicitor during his confessions. Taylor knew that he had an opportunity to tell these witnesses of his mistreatment. He did not tell them because it did not occur. Instead he made three separate confessions and drew a map of the scene of the crime (Trial Record 140-144). He told the witnesses that he wanted to get it off his chest (Trial Record 111). These facts are shown by the record in the original criminal case which we hope this court will consider. In fact, since the Alabama Supreme Court took full notice of this record in holding the petition unreasonable and containing no probability of truth, this court must read the trial record to review intelligently the Alabama judgment denying leave to file coram nobis proceedings below. See **Frank v. Mangum, supra.**

It is further to be noted that all of these witnesses to the confessions stated that they were given voluntarily. (Trial Record.) Alabama law requires that predicate. **Taylor v. State**, 30 So. 2d 256. Able trial counsel asked searching questions on the subject of the voluntary nature of the confessions and although he tried could not produce a scintilla of evidence that the petitioner was mistreated in any way. **Taylor v. State, supra.** (Trial Record.) Yet petitioner now states that he said nothing concerning the alleged mistreatment to his trial counsel. There is no affidavit of trial counsel attached to the petition for leave.

Petitioner was tried in October, four months after his arrest. We know he was not in the custody of Pritchard police at his trial in Mobile, and yet he now says that he failed to tell the court or counsel about his mistreatment. At the time of his trial the fear engendered in early July had persisted for four months.

After his trial and conviction, the trial record shows that Taylor was committed to Kilby Prison, over two

hundred miles from the Pritchard police (Trial Record 6). Yet petitioner now says he did not tell anyone about his mistreatment because he was continually afraid of the Pritchard police.

When trial counsel filed briefs and orally argued Taylor's appeal (which is also required by Alabama law in death cases, General Acts of Alabama, 1943, page 217), Taylor was still silent. We do not know exactly when present counsel were employed, but it was after the appeal was decided on April 24, 1947. Sometime after the appeal and the employment of present counsel, Taylor finally told that he was brutally beaten and constantly in fear. As stated before, these alleged facts were filed in the Alabama Supreme Court on Thursday before the execution set for the following midnight, September 18, 1947.

These were the facts known by the Alabama Supreme Court when the petition was filed. In taking full notice of the trial record on appeal and the opinion of the Alabama Supreme Court, the State court would have been justified in denying leave on this showing alone, but the State court had more. The State filed as exhibits to its motion to dismiss the petition eight photographs of the nude body of Samuel Taylor which photographs were taken at 5:37, P. M., July 3, 1946—the day on which the confessions were made and immediately after the three nights that petitioner has alleged that he was brutally beaten. The State of Alabama has had these exhibits forwarded to the Clerk of this court and we submit that no marks of violence or brutal treatment is indicated. The dissenting judge on the Alabama Supreme Court in this case simply could not distinguish faults in the photographic process from what he thought were marks on Taylor's body. Anyone who has observed photographs and carefully examines these exhibits will conclude, as

did the other six justices of the Alabama Supreme Court, that there are no marks on Taylor's body (R. 17). Any blemishes on the photographic print can, by comparison, be shown to be minor defects in the photographic process. Perhaps we should here say that it is not unusual for photographs to be taken of defendants in charges of this nature. It is sometimes anticipated by law enforcement officers that a voluntary confession will later be repudiated. Photographs have been taken and introduced in evidence before. **Johnson v. State**, 242 Ala. 278, 5 So. 2d 632.

5.

We should also discuss something further about the dissenting opinion in this case. Petitioner's brief cites Mr. Justice Brown's dissent as authority for the proposition that the State's motion to dismiss had the effect of admitting the allegations of the petition for leave. Such an argument defeats itself. True, most lawyers concede that a **demurrer**, sometimes called a motion to dismiss, admits the truth of allegations well pleaded for the purpose of argument or determining the legal sufficiency of a pleading. But the motion to dismiss filed by the State below sets out as a specific ground that the petition for leave contained no probability of truth (R. 12). Regardless of the name used on the pleading that ground is specifically set forth among others (R. 12). Moreover, the Supreme Court of Alabama has repeatedly held that the reasonableness of the allegations of the petition and the probability of the truth thereof should be determined and will influence the court's discretion in granting or denying leave. **Johnson v. Williams, supra; Ex Parte Burns, supra.** No pleading on the part of the State is absolutely necessary to raise the issue of the probability of the truth of the allegations. Such an issue is inherent in the nature of the remedy in coram nobis

proceedings. The State's motion to dismiss below was not intended to admit the truth, even for argumentative purposes, the allegations of the petition. The motion was not treated as such an admission by the majority of the Alabama Court (R. 20). Its purpose to raise the issue of the probability of the truth of the allegations was well understood. Certainly the State would not have filed photographs opposing the allegation that petitioner was mistreated and at the same time filed a motion admitting mistreatment. Petitioner's contention, that the motion admits the truth of allegations in the petition, if correct would require a novel departure from the well known requirement that allegations in petitions for leave must be reasonable and contain a probability of the truth. **Hysler v. Florida, supra; Johnson v. Williams, supra.**

Recent cases cited by petitioner, **Williams v. Kaiser,** 323 U. S. 471, and **Tompkins v, Missouri,** 323 U. S. 485, do not support his interpretation of the issue raised by the motion to dismiss below. Those cases were petitions for habeas corpus in which no denials were filed and no answers were required by the court. In those habeas corpus cases, this court did refer to the allegations of the petition as having been admitted. But this court is familiar with the distinction between habeas corpus and coram nobis proceedings. The practice in Alabama in the latter proceeding directly raises the issue of the probability of truth. **Hysler v. Florida, supra; Johnson v. Williams, supra.** This cannot be said in the case of a petition for habeas corpus.

Allegations in the **Kaiser** and **Tompkins** cases, supra, were held by this court to be admitted as true on the further ground that the allegations did not conflict with the sentence and judgment. This court has no copy of the sentence and judgment in this case now before it. Further, the allegations of the present petition concern-

ing confessions are not matters which would be included in a judgment or sentence. If this court reads the record of the trial, it will find obvious inconsistencies between allegations of the petition and recitals of the trial record. For example, at the time of the confession, Mayor Dismuke of Pritchard, Alabama, states that Taylor was not nervous (Trial Record 58), while the petition alleges he was in great fear. It is shown that at the time of the confession Taylor was "rather pleasant" (Trial Record 58). Taylor said he made the confession to "get it all off his chest" (Trial Record 111). One witness testified that he was in the Pritchard jail before 3 o'clock on July 3 when the confession was made and that Taylor had not been interrogated immediately prior to that time (Trial Record 110). Further, that Taylor called the witness to his cell and said he wanted to confess (Trial Record 111). Certainly these allegations are inconsistent with the allegations in the petition. In taking full notice of the trial record, the Alabama Supreme Court had substantial, and we may say conclusive, reasons for holding that the petition contained no probability of truth—that it was unreasonable.

REPLY TO SOME OF PETITIONER'S CONTENTIONS

The claim that Alabama coram nobis proceedings offer "no substantial hope of relief" and is a "procedural labyrinth" is untenable. Cf. Marino v. Ragen, No. 93, October Term, 1947, Dec. 22, 1947. Alabama procedure concerning this writ is simple and now well known. In the few cases decided by the Alabama court since Hysler v. Florida, supra, the rules announced are clear, not in conflict, and comparatively simple. See Johnson v. Williams, 244 Ala. 391, 13 So. 2d 683; Redus v. Williams, 244 Ala. 459, 13 So. 2d 561, cert. den. 320 U. S. 775, 64 S. Ct. 85, 88 L. Ed. 404; Smith v. State, 245 Ala. 161, 16 So. 2d

315; **Ex Parte Burns**, 247 Ala. 98, 22 So. 2d 517, cert. den. 326 U. S. 765, 90 L. Ed. 461; **Ex Parte Lee**, 248 Ala. 246, 27 So. 2d 147, cert. den. 67 S. Ct. 621.

In the five cases above noted, leave was refused for reasons that are well known as grounds for denying relief. See 24 C. J. S., Criminal Law, Sections 1606, et seq. Of the few petitions for leave to file coram nobis presented to the Alabama Supreme Court none have been adequate or substantial. This does not mean that the Alabama court systematically or automatically rejects such petitions. Five or six cases do not furnish a broad enough basis for counsel to conclude that leave will never be granted. It will be granted when the allegations are sufficient in form and substance and when such allegations are reasonable and contain the probability of truth.

Although the petition in this case may be said to clearly allege the violation of a constitutional right (petitioner's brief, p. 9), when tested in the light of the original trial record and the photographs exhibited, those facts alleged have been found to lack a probability of truth and to be unreasonable. Such finding by the Alabama Supreme Court is in the nature of a finding of fact. This finding by the highest court of a state should be given great weight by the Supreme Court of the United States. **Hysler v. Florida, supra; Frank v. Mangum, supra.**

A careful reading of the opinion of the Alabama court in this case (R. 18) discloses that the petition for leave was not denied solely because Samuel Taylor offered nothing in his defense. The opinion merely indicates as an additional consideration that the court below was not sympathetic with one who had no defense at all. In Alabama a defendant need not take the witness stand, but is privileged to do so. Counsel may not comment on his failure to take the stand, but no statute can effectively prevent an inference from being drawn from such failure.

There has been no "foreclosure of the right to complain 'of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial . . . .'" Lee v. Mississippi, No. 91, October Term, 1947 (January 19, 1948). On the contrary, it is shown that Alabama has an open remedy for petitioner. Denial of the petition in this particular case does not demonstrate that procedure is lacking, but that petitioner's showing was lacking.

The distinctions sought to be drawn between this case and the Hysler case are not convincing (Petitioner's brief, p. 12). It is submitted that this case should be governed by the principle of the Hysler case, supra. Even the dissenting opinion of Mr. Justice Black in that case is rested on the ground that the state court did not pass on the credibility of petitioner's allegations. In Alabama the court below did (R. 20). The dissenting opinion further states:

> "That is not to say that the Florida Supreme Court will not deny a petition when the facts alleged are so patently incredible that further pursuit of the remedy would be frivilous imposition upon the trial court."

In effect, that was the holding of the Alabama court below.

The dissenting opinion in the Hysler case is further grounded on the fact that Hysler's allegations were "not denied by anyone" and "a summary rejection of them without a hearing by the court of first instance would raise serious questions of compliance with the constitutional requirements of a fair trial." In this respect there is now before the court a stronger case than the Hysler case. The photographs are a concrete example of a denial of the allegations of Taylor's petition. The trial record, considered by the Alabama court, is another.

Petitioner had a hearing—he filed affidavits to his petition which were considered. Due process does not require a second trial after a valid and fair conviction whne a more limited hearing demonstrates that if extended it would be merely "trifling with justice."

2, 3, AND 4, AND CONCLUSION

We believe that this court will follow the rule that a state

> "is free to regulate the procedure of its courts in accordance with its own conception of policy and fairness unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts, 291 U. S. 97, 54 S. Ct. 330, 90 A. L. R. 575, 78 L. Ed. 674.

We believe that this court will decide that Alabama procedure provides an ample remedy in coram nobis proceedings for those who contend that after trial and appeal and affirmance there are additional matters which prevented a fair trial in the constitutional sense; that it is not unreasonable for a state to require an adequate showing to its appellate court that the facts are reasonable and contain the probability of truth. Hysler v. Florida, supra.

We believe that in this case this court will decide that the Alabama Supreme Court had real and substantial reasons for holding that the petition was unreasonable and did not contain the probability of truth.

Petitioner has not been deprived of liberty without due process of law.

Respectfully submitted,

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Counsel for Respondent.

BERNARD F. SYKES, and
JAMES L. SCREWS,
Assistant Attorneys General.

CERTIFICATE

I hereby certify that I have forwarded a copy of the foregoing brief to Thurgood Marshall, 20 West Fortieth Street, New York, N. Y., and Nesbitt Elmore, Professional Center Building, Montgomery, Alabama, attorneys for petitioner, on this the ..... day of April, 1948.

A. A. CARMICHAEL,
Attorney General of Alabama,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

No. 721.—October Term, 1947.

Samuel Taylor, Petitioner, v. State of Alabama. | On Writ of Certiorari to the Supreme Court of the State of Alabama.

[June 21, 1948.]

Mr. Justice Burton delivered the opinion of the Court.

The question in this case is whether the State of Alabama deprived the petitioner of due process of law under the Fourteenth Amendment [1] to the Constitution of the United States when the Supreme Court of that State denied him permission to file a petition for writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama. We hold that it did not. We hold also that the Alabama procedure, whereby one of its trial courts, by writ of error *coram nobis*, may set aside its own judgment in a criminal case because of an error of fact not apparent on the common law record, is a procedure long recognized by the common law and constitutes due process of law under the Fourteenth Amendment. We hold further that the procedure of that State is in accordance with long-established common law practice and constitutes due process of law under the Fourteenth Amendment in requiring that the permission of the Supreme Court of Alabama be secured by a petitioner before filing such a petition for writ of error *coram nobis*, in a trial court of Alabama, if it appears that the trial court's judgment already has been affirmed by such Supreme Court.

October 25, 1946, the petitioner, Samuel Taylor, a Negro, residing in Prichard, Mobile County, Alabama, and

[1] ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . ." U. S. Const. Amend. XIV, § 1.

then 19 years old, was indicted for rape. The act for which he was indicted was an attack made in Prichard, April 12, 1946, on a white girl then 14 years old. October 26, Henri M. Aldridge, of the Mobile County Bar, was appointed by the Circuit Court of that County to represent the petitioner. However, October 28, on counsel's own motion, this order was set aside and, throughout the trial, he represented the petitioner, evidently as counsel of the petitioner's choice or of that of his family. December 30, on motion of the Circuit Court, the same counsel was appointed to prepare and prosecute the petitioner's appeal to the Supreme Court of Alabama. He thus represented the petitioner at least from October 26, 1946, until the date of the judgment of the Supreme Court of Alabama, April 24, 1947, and it is clear that he rendered adequate and competent service.[2]

The trial took place in the Circuit Court of Mobile County, November 19, 1946. After a full hearing in which the petitioner did not take the stand, the trial judge submitted to the jury four alternative forms of verdicts: "guilty of rape as charged in the indictment, and further find he shall suffer death by electrocution"; "guilty of rape, as charged in the indictment, and further find he shall be imprisoned in the penitentiary for—" ("whatever you should determine, not less than ten years up to life"); "guilty of carnal knowledge, as charged in the indictment, and further find he shall be imprisoned in the penitentiary for — years" ("whatever you should determine, not less than two nor more than ten"), and "not

[2] The Supreme Court of Alabama, in the appellate proceeding, said: "Counsel appointed by the court for the defense has very diligently presented the questions raised in the record, both by oral argument and a full and complete brief." *Taylor* v. *State*, 249 Ala. 130, 133, 30 So. 2d 256, 258. In the present proceeding that court said: "Upon the trial of this cause the petition admits that the defendant was represented by able counsel." *Ex Parte Taylor*, 249 Ala. 667, 669, and see p. 670, 32 So. 2d 659, 660, 661.

guilty." The jury returned its verdict in the first form and the petitioner was sentenced to be electrocuted January 9, 1947, at the Kilby Prison, at Montgomery, Alabama. No motion was made for a new trial but notice of appeal was entered and the petitioner's sentence was suspended pending the appeal.

On appeal the case was fully briefed and argued, and, April 24, 1947, the judgment was unanimously affirmed. *Taylor* v. *State*, 249 Ala. 130, 30 So. 2d 256. From a subsequent brief of the State it appears that the petitioner did not apply for a rehearing, that he was later denied clemency by the Governor, and that he was granted a reprieve from the execution of the death sentence until September 19, 1947.

September 18, 1947, the petitioner, represented by new counsel, instituted the present proceeding in the Supreme Court of the State at Montgomery. This proceeding is numbered First Division 308 and is entitled "*Ex Parte Taylor, In Re No. 279 Samuel Taylor Appellant* v. *State of Alabama, Appellee.*" It was initiated by a petition to the Supreme Court of Alabama for an order granting the petitioner the right to file a petition in the Circuit Court of Mobile County, Alabama, for writ of error *coram nobis*. The petition in this new proceeding was sworn to by the petitioner and supported by the affidavits of three men who had been in the Prichard jail with him June 29–July 3, 1946. This petition and these affidavits executed in September, 1947, presented for the first time a charge that the petitioner's several confessions, his identification of the prosecutrix and the demonstration of locations which had been made by the petitioner as to his part in the crime, all on July 3, 1946, had been induced by physical violence administered to him or threats made to him in the Prichard jail prior to that date. Throughout the trial uncontradicted testimony had been given repeatedly that the petitioner had volunteered his confessions and that he had made his dis-

closures "to get it all off his chest." This attitude was reinforced by the petitioner's ready and complete disclosures of many details otherwise unavailable. In each instance these were consistent with the other evidence in the case and were demonstrative of the unfailing truthfulness of the statements made by the petitioner on July 3. Until the filing of this new proceeding, the petitioner's statements had not been at any point self-contradictory or in conflict with other evidence. His present petition, on the other hand, is in direct conflict with the statements made by him to the Mayor of Prichard and others, July 3, and as to which the Mayor testified at the trial, November 19, 1946. The petitioner now alleges that when, apart from the trial, he "was asked by his said attorney who represented him in the trial . . . if he was mistreated or beaten in any fashion by the law enforcement officers in connection with the giving of said confession he replied in the negative, being uneducated and ignorant as aforesaid, and fearful of further reprisals by said police officers." It does not appear that he made any contrary disclosures to his counsel even during the trial of November 19, 1946, or up to the affirmance of the case on appeal, April 24, 1947, although the petitioner had long been out of the custody of the Prichard police and was aware of the diligence with which his counsel, without success, had sought throughout the trial to uncover possible evidence of violence or other coercion in connection with the petitioner's disclosures made on July 3. It is worthy of notice that, prior to the admission in evidence of each statement of the petitioner in the nature of a confession, his counsel diligently sought to inquire into its voluntariness, and never succeeded in bringing out evidence of its involuntary character. The trial judge in each instance expressly found the evidence to be admissible. The petitioner's failure to change his original statement to his counsel would of course be con-

sistent with its truthfulness and with all the evidence on record before September 18, 1947.

After the filing of the present proceeding the sentence of execution of the petitioner was further suspended. September 25, 1947, the State of Alabama filed its motion to dismiss the new petition. In that motion it called the attention of the court to the testimony in the original proceeding recently reviewed by that court and contradictory to the new position taken by the petitioner. October 29, 1947, the issue was argued and the State filed an affidavit accompanied by eight photographs which had been taken of the petitioner at 5:37 p. m., July 3, 1946. Seven of these were taken of him in the nude immediately after he had made his several confessions on that day and immediately following the dates June 29 to July 2, inclusive, on which dates the new petition alleges that severe beatings had been administered to him.[3] November 13, 1947, the Supreme Court of Alabama, by a vote of six to one, denied the petition. *Ex parte Taylor*, 249 Ala. 667, 32 So. 2d 659. December 4 it denied a rehearing. March 3, 1948, petition for certiorari was filed here. Because of the important relation of this procedure to due process of law under the Fourteenth Amendment, especially in capital cases, we granted certiorari. — U. S. —.

The first question is whether this Alabama procedure to secure a review of a judgment in a criminal case by writ

[3] The State in its brief here says that "it is not unusual for photographs to be taken of defendants in charges of this nature. It is sometimes anticipated by law enforcement officers that a voluntary confession will later be repudiated. Photographs have been taken and introduced in evidence before. *Johnson* v. *State*, 242 Ala. 278 [282], 5 So. 2d 632 [635]." At the original trial no repudiation of the confessions had been made and no testimony had been introduced supporting any charge of coercion of the petitioner by physical violence or otherwise. The photographs were introduced in the case only after affidavits charging coercive physical violence had been filed in the present proceeding.

of error *coram nobis* constitutes due process of law under the Fourteenth Amendment. It is clear that it does. This procedure to enable a trial court to correct its own judgment when found by it to have been based upon an error of fact not apparent on the common law record has long been recognized at common law.[4] It survives in varying forms in state practice but it may be that in federal practice its purpose is otherwise served.[5] This Court has held expressly that, in the form in which the procedure came before us from Florida, in 1942, it conformed to due process of law under the Fourteenth Amendment. *Hysler* v. *Florida*, 315 U. S. 411.[6]

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[4] "If . . . there was error in fact in the proceedings, not error in law, a writ of error *coram nobis* or *coram vobis* might issue to the trial court to enable it to correct the error. . . . If the cause were in the K. B. [King's Bench], the writ would be *coram nobis*, before us, as the record remaining in the court where the king is constructively; if it were in the common pleas, the writ would be *coram vobis*, before you, since the record remains then before the justices of that court." Cooley's Blackstone's Commentaries (4th ed., Andrews, 1889), Book III, p. *406 n. 2.

See also, opinion by Mr. Justice Clifford, on circuit, in *United States* v. *Plumer*, 27 Fed. Cas. 561, 573, No. 16,056.

[5] See *e. g.*, *Hysler* v. *State*, 146 Fla. 593, 1 So. 2d 628, affirmed, 315 U. S. 411; *McCall* v. *State*, 136 Fla. 349, 186 So. 802; *Chambers* v. *State*, 117 Fla. 642, 158 So. 153; *Lamb* v. *State*, 91 Fla. 396, 107 So. 535; and see as to the federal practice, Fed. R. Crim. P., 32, 33, 35 and 36; *Reid* v. *United States*, 149 F. 2d 334 (C. C. A. 5th); *Young* v. *United States*, 138 F. 2d 838 (C. C. A. 5th); *United States* v. *Gardzielewski*, 135 F. 2d 271 (C. C. A. 7th); *Robinson* v. *Johnston*, 118 F. 2d 998 (C. C. A. 9th); *Strang* v. *United States*, 53 F. 2d 820 (C. C. A. 5th); *United States* v. *Plumer*, 27 Fed. Cas. 561, 571–574, No. 16,056. See also, *United States* v. *Smith*, 331 U. S. 469, 475–476, n. 4; *United States* v. *Mayer*, 235 U. S. 55. Cf. *United States* v. *Norstrand Corp.* (C. C. A. 2d), decided May 26, 1948, not yet reported; Moore and Rogers, Federal Relief from Civil Judgments, 55 Yale L. J. 623, 669–674 (1945–1946).

[6] "Such a state procedure of course meets the requirements of the Due Process Clause. Vindication of Constitutional rights under the Due Process Clause does not demand uniformity of procedure by

The Supreme Court of Alabama, at least since its decision, in 1943, in *Johnson* v. *Williams*, 244 Ala. 391, 13 So. 2d 683, has followed Florida precedents as to this procedure, and there is no controversy here as to the conformity of the present procedure with that of those precedents.[7]

As distinguished from the traditional writ of error enabling a superior court to review an error of law committed by a trial court, the writ of error *coram nobis* brings the error of fact directly before the trial court. However, when the judgment of the trial court already

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the forty-eight States. Each State is free to devise its own way of securing essential justice in these situations. The Due Process Clause did not stereotype the means for ascertaining the truth of a claim that that which duly appears as the administration of intrinsic justice was such merely in form, that in fact it was a perversion of justice by the law officers of the State. Each State may decide for itself whether, after guilt has been determined by the ordinary processes of trial and affirmed on appeal, a later challenge to its essential justice must come in the first instance, or even in the last instance, before a bench of judges rather than before a jury.

"Florida then had ample machinery for correcting the Constitutional wrong of which Hysler complained. But it remains to consider whether in refusing him relief the Supreme Court of Florida denied a proper appeal to its corrective process for protecting a right guaranteed by the Fourteenth Amendment." *Hysler* v. *Florida*, 315 U. S. 411, 416–417.

See also, *Bute* v. *Illinois*, 333 U. S. 640, 650–654, as to the scope which states enjoy in providing their own procedures within the meaning of due process of law under the Fourteenth Amendment.

[7] See also, *Ex parte Lee*, 248 Ala. 246, 27 So. 2d 147, cert. denied, *sub nom. Lee* v. *Alabama*, 329 U. S. 808; *Ex parte Burns*, 247 Ala. 98, 22 So. 2d 517; *Smith* v. *State*, 245 Ala. 161, 16 So. 2d 315; *Redus* v. *Williams*, 244 Ala. 459, 13 So. 2d 561, cert. denied, 320 U. S. 775; *Brown* v. *State*, 32 Ala. App. 500, 27 So. 2d 226. While, for reasons set forth in the respective opinions, the petition for writ of error *coram nobis*, or for permission to file such a petition has been denied in each of the foregoing cases in the Supreme Court of Alabama, nevertheless, the Court of Appeals of Alabama, in the last case cited, in 1946, granted leave for a petitioner to present his petition for writ of error *coram nobis* to the Circuit Court of Russell County.

has been affirmed by the judgment of a superior court, then the trial court is bound by the mandate of that superior court. Under those circumstances, it is appropriate to require a petitioner to secure, from that superior court, permission to file his petition for writ of error *coram nobis* in the trial court where he seeks an order setting aside the judgment already affirmed by the superior court. This additional step was included in the Florida procedure which was favorably considered by this Court in *Hysler* v. *Florida, supra.*

It is precisely this step that is before us in the present proceeding. It is the refusal of the Supreme Court of Alabama to grant this permission that is under review. On this point we hold that the Alabama procedure, following both the ancient precedents of the common law and the more recent precedents of Florida and of this Court, does not violate the due process of law required by the Fourteenth Amendment.

We come now to the merits of this particular case. It is charged that the denial by the Supreme Court of Alabama of the permission here sought from it amounted in itself to a denial to this petitioner of the due process of law to which he was entitled under all the circumstances of this case. The petitioner, however, had no mandatory right to the permission. The issue before us is not the issue which would have faced the trial court in the event that the Supreme Court of Alabama had granted permission to the petitioner to file his petition for writ of error *coram nobis* in that court. The proceeding here is not even a review, *de novo,* of the merits of the request made to the Supreme Court of Alabama. The issue before us is limited to a determination of whether, under all the circumstances, the action of the Supreme Court of Alabama in denying permission for the petitioner to file his petition not merely had committed error but had

deprived the petitioner of life or liberty without due process of law.

In passing upon this request that court was not bound to accept at face value the allegations of the petition. The issue was not submitted to it as though on a demurrer. That court was called upon to decide not only whether this new petition, if true, presented a meritorious ground for setting aside its previous judgment, but that court, in its supervisory capacity over the enforcement of the law, was called upon to determine also the reasonableness of the allegations made in the petition and the probability or improbability of their truth. The standard by which the Supreme Court of Alabama seeks to guide its determination in such a case has been stated by it in *Johnson* v. *Williams*, 244 Ala. 391, 394, 13 So. 2d 683, 686, as follows:

> "We recognize in this State, as does the Supreme Court of Florida (Hysler v. State, 146 Fla. 593, 1 So. 2d 628), that the common law writ of error coram nobis is available . . . and is the appropriate remedy to be followed. See 24 C. J. S., Criminal Law, § 1606. The rule in that State, which we think is just and proper, and is here adopted, calls for a petition to this Court, when the judgment of conviction has been here affirmed, for leave to petition the circuit court where the conviction was obtained for a writ of error coram nobis to review such judgment. Such application should make an adequate showing of the substantiality of the petitioner's claim to the satisfaction of this Court. A mere naked allegation that a constitutional right has been invaded will not suffice. The application should make a full disclosure of the specific facts relied upon, and not merely conclusions as to the nature and effect of such facts. The proof must enable this Court to 'ascertain

whether under settled principles pertaining to such writ the facts alleged would afford at least prima facie just ground for an application to the lower court for a writ of error coram nobis.' And in the exercise of our discretion in matters of this character, *this Court should look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof.* The Supreme Court of the United States in Hysler v. State of Florida, 315 U. S. 411, 62 S. Ct. 688, 691, 86 L. Ed. 932, said that 'each State may decide for itself whether, after guilt has been determined by the ordinary processes of trial and affirmed on appeal, a later challenge to its essential justice must come in the first instance, or even in the last instance, before a bench of judges rather than before a jury,' and that the procedure outlined above, which we have adopted from the Florida Court, meets the requirements of the due process clause of the Constitution." (Italics supplied.)

It remains to apply the test to this case. There is a presumption of validity attached to the factual basis for the original judgment which was rendered about 18 months ago after a jury trial. It has been affirmed unanimously by a Supreme Court of seven judges and, in this very proceeding, that court reached a conclusion, by a vote of six to one, that "the averments of the [new] petition are unreasonable and that there is no probability of truth contained therein, and that the proposed attack upon the judgment is not meritorious." *Ex parte Taylor*, *supra*, pp. 670–671.

In reviewing that conclusion, we emphasize the following considerations:

Like every capital case, it is one of serious moment. In the state courts and here, consideration must be given

to each material issue of fact and law. Both opinions handed down by the Supreme Court of Alabama disclose an appreciation by its members of their constitutional obligations to the petitioner, the State and the nation.

Since the petitioner was sentenced, November 19, 1946, to pay the penalty which the law and the jury have prescribed for the crime of which he was then convicted, the execution of the sentence has been suspended repeatedly in order that the fullest consideration might be given by appropriate authorities to every substantial argument presented on his behalf. The Supreme Court of Alabama has stated its appreciation of its responsibilities in this case as follows:

> "We are fully mindful of petitioner's rights under the due process clause of the Federal Constitution and the responsibility resting upon this court in cases of this character. We not only are mindful of responsibility so far as this defendant is concerned, but also feel like responsibility to society in the enforcement of the criminal laws of our state." *Ex parte Taylor, supra*, p. 669.

If the new petition and its supporting affidavits stood alone or had to be accepted as true, the issue would be materially different from what it is. The Supreme Court of Alabama, however, read this petition and these affidavits, as we must read them, in close connection with the entire record already made in the case. They must be tested in that context for their reasonableness, the probability of their truth, the effectiveness of the attack they make on the original judgment and their relationship to the general enforcement of law with justice to all.

The new petition and the affidavits have inherent elements of strength and weakness bearing upon their credi-

bility to which the Supreme Court of Alabama was entitled to give consideration. In contrast to the situation presented in many other cases where a petition for writ of error *coram nobis* has been relied upon, this petition contains no charge that there was any false testimony presented at the trial (except for its reference to testimony by Sergeant Wilkes which reference the record shows is plainly erroneous). The petitioner bases his claims upon evidence not presented at the original trial. This consists of evidence of coercion alleged to have been applied to the petitioner by police officers at times not covered by the testimony given at the original trial. All of this additional evidence, if true, must have been known to the petitioner at the time of his trial but it is claimed that he concealed it even from his own counsel. It is newly disclosed evidence, rather than newly discovered evidence, and its credibility in the eyes of the Supreme Court of Alabama may well have been affected by that fact. The new petition does not deny the guilt of the petitioner or deny any of the acts upon which his conviction was based. It claims merely that the coercion applied to the petitioner was such that it would be a sufficient basis for the exclusion, from a new trial, of the evidence of certain confessions and subsequent conduct of the petitioner that was used against him at the original trial.

The petition contains no charges that the state's attorney made use of any false testimony or that he knew of any of the coercion relied upon in the new petition.

More serious than this lack of compelling force to the petitioner's attack are the following circumstances which were appropriate for consideration by the Supreme Court of Alabama in passing upon the probable truth or falsity of those allegations:

1. The only affidavits presented are those of the petitioner himself and of three persons, each of whom was an associate of the petitioner, arrested and detained with him by the Prichard police, June 29–July 3, 1946, under a charge of some crime not connected with the rape. One of these affiants is serving a ten-year sentence for robbery in the Kilby Prison. With the exception of one instance on June 29, none of the three associates claims to have seen the alleged beatings of the petitioner, although each claims to have heard the beatings being administered. The charges as to the alleged beatings are made in such extreme terms that marks of such beatings, if they actually occurred, probably would have been evident on July 3, whereas the testimony at the trial as to the physical condition of the petitioner on that day is to the contrary and the appearance of the petitioner in the photographs, taken on July 3, was found by the Supreme Court of Alabama to lend no support to these statements in the affidavits.

2. The petition charges Sergeant C. D. Wilkes of the Prichard police force with perjuring himself "by falsely testifying that Petitioner was not subjected to any mistreatment in connection with making said confession." Sergeant Wilkes, however, gave no testimony on that subject. At the trial he testified only as to his being on duty when the petitioner was arrested on June 29, as to the identification made of the petitioner by the prosecutrix, as to the fact that he talked with the petitioner at 9 p. m. on July 2, and as to the manner in which the petitioner had volunteered to make his confession at 3 a. m. on July 3. Nothing was said by Sergeant Wilkes on direct or cross-examination or was even asked of him on cross-examination as to any mistreatment of the

petitioner or as to any subject as to which there appears to be any conflict of fact. The record of the trial demonstrates on its face that the charge of perjury is without foundation.

3. In the trial record there is no evidence, either on direct or cross-examination of any witness, of any physical or mental coercion, or of any inducement or promise bearing upon the volunteered, detailed and repeated confessions by the petitioner of his conduct, the identification of his victim or his designation, by sketch and on the premises, of the localities of material occurrences. Although the alert and diligent counsel for the petitioner endeavored at the trial to test on each occasion the voluntariness of every statement in the nature of a confession that was made by the petitioner, he did not succeed in convincing the court that any of them should be excluded as having been involuntarily made. His efforts resulted in nothing more than establishing that many witnesses had little or no knowledge as to the presence or absence of coercion during extended periods prior to the petitioner's confessions, although they testified to the voluntariness of the confessions at the time they were made and for varying periods prior thereto. The Supreme Court of Alabama said: "The question of the voluntary character of the confession was duly considered and treated in the opinion on former appeal. Nor did the record contain the slightest indication that the defendant, a Negro twenty years of age, was ignorant and in any manner subnormal." *Ex parte Taylor*, *supra*, p. 669.

4. No witness testified at the trial to having seen any evidence of physical violence on the body of the petitioner. G. M. Porter, the member of the Prichard police who was on duty much of the time at the jail and who brought the petitioner from his cell in answer to petitioner's request on July 3 for an opportunity to make his initial confes-

sion, expressly testified on cross-examination that at that time there were no signs of the petitioner having been mistreated. The photographs taken that afternoon are described in the opinion of the Supreme Court of Alabama as disclosing "no indications on the body of any physical violence as set forth in the petition." *Ex parte Taylor, supra*, p. 669.

5. Still more striking are the statements made by the petitioner himself on July 3. These were made under circumstances so disarming and self-confirmatory as to suggest the reasonableness of their credibility by the jury and later by the Supreme Court on its review of the record. When read in full, the statements of the petitioner throughout July 3 are so free in manner, detailed in content and affirmative in their nature that they carry obvious earmarks of being the truth. The record shows that at 3 a. m. on July 3 the petitioner called from his cell that he wished to tell "all of it" and "get it all off his chest." Shortly thereafter, he told his story before the Mayor of Prichard and others. He repeated it to still others who came in later. He volunteered further details while riding in a car to the scene of the crime. His statements in the car were then and there written down by an assistant county solicitor, were signed by the petitioner and were supplemented by a sketch which the petitioner drew himself. These signed statements and this sketch were introduced in evidence on cross-examination of the assistant county solicitor who had been called as a witness on behalf of the petitioner. Later that day, the petitioner made a further detailed statement in question and answer form. He personally identified the victim of his crime in the presence of several witnesses and she identified him. In his testimony given in the presence of the Mayor, the petitioner stated unequivocally that he had not been

beaten or coerced. Excerpts from this testimony are set forth in the margin as retold by the Mayor at the trial.[8]

6. The petition alleges that the petitioner falsely told his own attorney that he had not been beaten and that he

[8] Glen V. Dismukes, Mayor of Prichard, on cross-examination by counsel for the petitioner, testified as to the appearance and conduct of the petitioner immediately preceding his initial confession at about 3 a. m. July 3, as follows:

"Q. And you do not know whether, or not, they actually inflicted any violence on him before you got there?

"A. He didn't appeared [appear] to be frightened in any way.

"Q. But you don't know. He didn't appear to be frightened?

"A. No.

"Q. Did he seem to be wholly at ease?

"A. Perfectly at ease.

"Q. I see. You came in there at three o'clock in the morning, and found this negro boy and two policemen, and he seemed to be perfectly at ease?

"A. Yes, sir.

"Q. Didn't seem to be upset at all?

"A. Not at all.

"Q. Didn't appear to be nervous?

"A. No.

"Q. Perfectly friendly?

"A. Rather pleasant.

"Q. Rather pleasant, well, and you don't know whether, or not, after you talked to him that they made any promises or threats, do you, Mr. Dismukes?

"A. No, sir."

Later that day the Mayor visited the scene of the crime with the petitioner and others and, after their return to the office of the Chief of Police, the petitioner made replies to questions asked of him by the State Solicitor. These questions and answers were recalled by the Mayor in his oral testimony and were thus introduced at the trial. Some of this testimony of the Mayor in response to direct examination by the State Solicitor was as follows:

"Q. Now, Mr. Dismukes, on that time and place there in the office to which we referred, do you recall me asking him [the petitioner], 'When were you arrested on this charge, Samuel?', and him answering,

so told his attorney because of fear of further reprisals. This attorney was the one who had been appointed by the court to defend the petitioner and later privately retained for the petitioner. Still later he was appointed by the court to handle the case on appeal. There is nothing other than this petition to suggest that the petitioner at any time misled his attorney, or lacked confidence in him, or had reason to lack confidence in him. Both the record and the attorney's conduct of the trial and appeal are thoroughly consistent with the petitioner's having told his attorney that he had not been beaten and there is nothing, other than the new petition, to show that such statement was false. The trial took place on November 19, 1946, and in that connection petitioner was detained in the Mobile County jail rather than with the Prichard

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'I was arrested Saturday night around midnight.' Do you recall that?

"A. Yes, sir.

"Q. Then do you recall me asking, 'And you have been in jail since that time?' and he answering, 'Yes, sir.'

"A. Yes, sir.

"Q. Do you recall me saying, 'Now, since you have been in jail, Samuel, have you been properly treated?' Do you recall him answering, 'Yes, sir.'

"A. Yes, sir.

"Q. Do you recall me asking him, 'Have any of the officers mistreated you, or threatened to beat you, or offered you any reward, to get you to talk?' And his answer being, 'No, sir.'

"A. That is right.

"Q. Do you recall me asking him, 'Have any of them beat you or kicked you?' And he answering, 'No, sir.'

"A. That's right.

"Q. Do you recall me asking him, 'Now, a few minutes ago when Dr. Grubbs took pictures of you naked, were there any marks on your body that were put there by the police?' And him answering, 'No, sir.'

"A. Yes, sir."

police. After his conviction the petitioner was sent to Kilby Prison in Montgomery, over 200 miles away.

The Supreme Court of Alabama concluded:

> "The trial was conducted with much care. There is nothing in the record on former appeal to indicate the slightest appeal to prejudice, nor was a single untoward incident recorded. We think it is asking entirely too much of the court to believe that this defendant, in the secrecy of consultation with his own able counsel, would say to counsel in substance that there was nothing upon which to base an objection to his confessions, solely because he was under fear generated by treatment which he claims was accorded him on July 3, nearly four months previous." *Ex parte Taylor, supra*, p. 670.

The petitioner's trial attorney has submitted no affidavit and has not appeared in the present proceeding.

For these reasons, we conclude not only that the Alabama procedure is in accordance with due process of law under the Fourteenth Amendment, but that the denial by the Supreme Court of Alabama of the permission thus sought by the petitioner to file a petition for writ of error *coram nobis* in the Circuit Court of Mobile County, Alabama, was not, under all the circumstances, such an arbitrary action as in itself to amount to a deprivation of due process of law.

The Supreme Court of Alabama was acting within its constitutional authority when, in its supervisory capacity over the procedure in the criminal trials of that State, it denied to petitioner the right to file this petition for writ of error *coram nobis* and stated that "Upon due consideration we conclude that the averments of the petition are unreasonable and that there is no probability of truth contained therein, and that the proposed attack

upon the judgment is not meritorious." *Ex parte Taylor*, *supra*, pp. 670–671.

Accordingly, the judgment of the Supreme Court of Alabama is

Affirmed.

MR. JUSTICE BLACK took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 721.—October Term, 1947.

Samuel Taylor, Petitioner, v. State of Alabama.	On Writ of Certiorari to the Supreme Court of the State of Alabama.

[June 21, 1948.]

Mr. Justice Frankfurter, concurring.

The dissenting opinion is written as though this Court were a court of criminal appeals for revision of convictions in the State courts. It is written as though we were asked to consider independently, and as a revisory appellate tribunal which had power to do so, whether a conviction in the courts of Alabama was based upon a coerced confession. One would hardly gather from the dissenting opinion that a trial was had in Alabama under the best safeguards to which a defendant in our courts is entitled; that he was defended by counsel concededly able who exerted all his professional skill on behalf of his client; that the trial judge guided the proceedings with competence and scrupulosity; that then followed a careful review of the trial on appeal, resulting in an affirmance of the judgment of conviction by the highest court of Alabama.

The Due Process Clause of the Fourteenth Amendment does require still further protection. A State must furnish corrective process to enable a convicted person, even after such proceedings as I have outlined, to establish that in fact a sentence was procured under circumstances which offend "the fundamental conceptions of justice which lie at the base of our civil and political institutions." *Mooney* v. *Holohan*, 294 U. S. 103, 110. Such re-insurance that no one is punished in violation of basic notions

of justice does not of course require determination of such a claim by another jury. "Each state may decide for itself whether, after guilt has been determined by the ordinary processes of trial and affirmed on appeal, a later challenge to its essential justice must come in the first instance, or even in the last instance, before a bench of judges rather than before a jury." *Hysler* v. *Florida*, 315 U. S. 411, 417.

Alabama, it cannot be denied, provides for such corrective process. If Alabama chose to leave the determination of the reasonableness of such a claim as is here made finally and on the merits to the Supreme Court of Alabama, of course we could not say that Alabama was disregardful of the requirements of due process. Nor, in view of the circumstances of this case—made as belatedly as it was and having regard to the human probabilities of the situation—could we in all fairness say that the Supreme Court of Alabama could not have reasonably rejected that claim. If the Supreme Court of Alabama could, as a matter of due process, have rejected on the merits the claim that the very foundation of the original proceedings, resulting in the judgment of conviction, was undermined because of an infraction of the United States Constitution, it would disregard reason for this Court to hold that a conscientious State court could not have concluded, as the Supreme Court of Alabama has concluded, that, on the totality of the circumstances, the probabilities were so strong against the truth of the allegations on which the claim was based that it did not require a hearing of witnesses to reject it. In reaching such a conclusion the Supreme Court of Alabama was entitled to consider the circumstances of the original trial, the manner of its conduct by the trial judge, the professional ability with which the defendant was represented, the behavior of the accused

throughout the proceedings, and, in the light of all these circumstances, the weight to be attached to the affidavits on which his present petition is based.

For me, the essence of the decision of the Alabama Supreme Court is contained in the following sentence: "We think it is asking entirely too much of the court to believe that this defendant, in the secrecy of consultation with his own able counsel, would say to counsel in substance that there was nothing upon which to base an objection to his confessions, solely because he was under fear generated by treatment which he claims was accorded him on July 3, nearly four months previous." 249 Ala. 667, 670. Since I cannot deem the mode of reasoning by which this conclusion was reached as unsustainable in reason, I am not entitled to reject it, and I therefore agree with this Court's opinion.

But this merely carries me to sustaining the judgment of the Alabama Supreme Court. There is not now before us any right that the petitioner may have under the Judicial Code to bring an independent *habeas corpus* proceeding in the District Court of the United States.[1]

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[1] See also § 2254 of the legislation revising the Judicial Code, H. R. 3214, 80th Cong., 2d Sess., as passed by Congress on June 16, 1948:

"State custody: remedies in State courts.

"An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

"An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented." (Congressional Record, June 16, 1948, p. 8676.)

SUPREME COURT OF THE UNITED STATES

No. 721.—October Term, 1947.

Samuel Taylor, Petitioner, v. State of Alabama.	On Writ of Certiorari to the Supreme Court of the State of Alabama.

[June 21, 1948.]

Mr. Justice Murphy, dissenting.

One of the fixed principles of due process, as guaranteed by the Fourteenth Amendment, is that no conviction in a state court is valid which is based in whole or in part upon an involuntary confession. *Lee* v. *Mississippi*, 332 U. S. 742, 745. Wherever a confession is shown to be the product of mental or physical coercion rather than reasoned and voluntary choice, the conviction is void. And it is void even though the confession is in fact true and even though there is adequate evidence otherwise to sustain the conviction.

This principle reflects the common abhorrence of compelling any man, innocent or guilty, to give testimony against himself in a criminal proceeding. It is a principle which was written into the Constitution because of the belief that to torture and coerce an individual into confessing a crime, even though that individual be guilty, is to endanger the rights and liberties of all persons accused of crime. History has shown that once tyrannical methods of law enforcement are permitted as to one man such methods are invariably used as to others. Brutality knows no distinction between the innocent and the guilty. And those who suffer most from these inquisitorial processes are the friendless, the ignorant, the poor and the despised. *Chambers* v. *Florida*, 309 U. S. 227, 237–238. To guard against this evil, therefore, the Constitution requires that a conviction be set aside whenever

it appears that a confession introduced at the trial is involuntary in nature.

The problem in this case is whether the petitioner, having been found guilty of rape and sentenced to death, is now entitled to a hearing on his allegation that the confession introduced at the trial was obtained by coercive methods. The Supreme Court of Alabama refused to allow a hearing on the theory that the allegation was unreasonable. In affirming that refusal, however, this Court relies upon considerations which are either irrelevant, inconclusive or contrary to the constitutional principle just discussed:

(1) The Court emphasizes that the petition does not deny the guilt of petitioner or deny any of the acts upon which his conviction was based. But whether petitioner be innocent or guilty has no bearing whatever on the reasonableness of the allegation that the confession was coerced. Even if we assume that petitioner is guilty beyond all doubt, the due process clause still invalidates his conviction if it was obtained through use of a coerced confession. The thrust of that clause is directed toward the voluntariness of the confession, not toward the innocence of the accused.

(2) Significance is given to the fact that the statements made by petitioner and introduced at the trial as his confession "are so free in manner, detailed in content and affirmative in their nature that they carry obvious earmarks of being the truth." Here again the Court misconceives the nature and purpose of the constitutional principle in issue. Coerced confessions are outlawed by the due process clause regardless of the truth or falsity of their content. It is just as uncivilized to brutalize an accused person into telling the truth as it is to force him to fabricate a confession. The torture and coercion are what the Constitution condemns. Hence an allega-

tion that a confession is involuntary is not rendered unreasonable because of the apparent truthfulness of that confession.

(3) The Court refers to the absence of any evidence at the original trial of any physical or mental coercion or of any inducement or promise bearing upon the confession made by petitioner. But because he allegedly was still suffering from the coercive effects of the beatings, petitioner made no effort at the trial to prove that he had been subject to undue pressure prior to 3 a. m., July 3, 1946, which is the crucial period. Most of the witnesses at the trial admitted ignorance as to the events occurring before that time. Thus the proof at the trial is at least consistent with the allegation now made and is not such as to render the allegation unreasonable.

(4) Objection is made that the only affidavits supporting the allegation are those of petitioner himself and of three persons associated with him. I fail to see, however, how such an objection indicates the unreasonableness of the allegation. The affidavits are those of four Negroes arrested on the street at the same time and detained on a robbery charge. Their common arrest and detention do not necessarily render untrustworthy any affidavits on the part of petitioner's three companions. A statement by a friend or associate can be just as probative for present purposes as a statement by an enemy or a disinterested person. It is not our function now to weigh the effect which the relationships of the four affiants may have on the verity of their statements. Sufficient it is that the statements are reasonable and pertinent on their face. Moreover, the jail sentence now being served by one of the companions does not, standing alone, destroy the force of his affidavit unless we are to indulge in the unrealistic assumption that nothing said by a prison inmate is to be given credence. Overlooked in this respect is the fact that two of the companions are

now free individuals who presumably lack what the Court feels is the taint of imprisonment. I can only conclude, therefore, that if there is anything wrong with these affidavits it does not appear in the background of the affiants.

(5) The Court observes that, except for one instance, none of the three associates claims to have seen the alleged beatings of the petitioner; all they did was to hear the brutality being inflicted. But I had never supposed that an allegation of coercion was any less reasonable because the alleged torture did not take place before the very eyes of disinterested witnesses. A moment's reflection will demonstrate that coercion is most likely to occur in secret and to be witnessed, if at all, through the ears of other inmates. Whether there is any truth to the claimed overhearing, of course, is a matter for the trier of facts and does not affect the reasonableness of the claim itself.

(6) The alleged beatings are said to be so extreme in nature as to be evident on July 3, when photographs of the petitioner were taken. Suffice it to say that photographs can be most deceiving, especially photographs of a person like petitioner. The Supreme Court of Alabama realized this fact and placed no particular reliance upon the photographs; the dissenting judge, however, was convinced that the pictures did show numerous marks on petitioner's body. Under these circumstances, we should refrain from judging the reasonableness of the allegation by what we think appears in deceptive photographs.

(7) The statement that Sergeant Wilkes perjured himself at the trial apparently has no foundation, as the Court points out. But this factor has no particular relevance to the reasonableness of the claim of coercion. Such an error should not prejudice petitioner's entire allegation.

(8) It is said that there is nothing other than the petition to show that petitioner concealed the alleged coercion from his attorney at the trial. This fact may be con-

ceded, but it hardly warrants treating the claim as unreasonable. The coercion conceivably could have been so effective as to shut petitioner's lips all through the trial and to silence him even as to his own attorney. We should not close the door to proof of that possibility.

Thus I find inadequate the considerations relied upon by this Court to affirm the judgment below. Petitioner has made an allegation of the most serious nature, one that reflects gravely upon the law enforcement processes of Alabama. He claims that for four nights preceding the confession he was "brutally beaten, kicked and bruised in an effort to obtain said confession" and put in "great fear for his future safety." Cf. *Chambers* v. *Florida, supra.* Three other persons are willing to testify that they heard blows struck and heard petitioner "scream and holler many times." A perusal of the record reveals an absence of any factor that would render this allegation completely sleeveless. Doubts may reasonably exist as to the merits of the allegation. But they are doubts which should be resolved at a full hearing. That is all that petitioner now asks. And I believe that a denial of his request to have the opportunity to prove his allegation is a denial of due process of a most flagrant nature.

We are dealing here with a matter of life and death, a matter of constitutional importance. If it were our function to speculate upon the effect petitioner's confession had on the jury's verdict, it would seem clear that the confession was of crucial importance. There was little else to sustain the verdict, the prosecutrix's identification of petitioner being somewhat weakened by the fact that she had previously made a positive and mistaken identification of another Negro. And the confession undoubtedly affected the jury's choice from among four alternative forms of the guilty verdict of the one that imposed the death sentence. Cf. *Andres* v. *United States,* 333 U. S. —. If the confession was in fact coerced, there-

fore, the conviction itself was thoroughly impregnated with the coercion. But the degree of such impregnation is irrelevant under the due process clause. As we have seen, it is enough if a coerced confession was actually introduced at the trial. The conviction then becomes void under well established rules. Where there is a reasonable possibility that a conviction is void for this reason, I think that an opportunity should be afforded a condemned man to demonstrate his case. Petitioner's execution is no answer to the allegation which he has raised.

Fortunately, this Court has not yet made a final and conclusive answer to petitioner's claim. All that has been decided here is that the Supreme Court of Alabama did not err in declining to permit him to file a petition for writ of error *coram nobis* in the Alabama courts. Nothing has been held which prejudices petitioner's right to proceed by way of *habeas corpus* in a federal district court, now that he has exhausted his state remedies. He may yet obtain the hearing which Alabama has denied him.

MR. JUSTICE DOUGLAS and MR. JUSTICE RUTLEDGE join this dissent.